

TRIAL

OF

FREDERICK EBERLE AND OTHERS,

At a Nisi Prius Court, held at Philadelphia, July 1816

BEFORE THE

HONORABLE JASPER YEATES, JUSTICE.

**FOR ILLEGALLY CONSPIRING TOGETHER BY ALL MEANS LAW-
FUL AND UNLAWFUL, "WITH THEIR BODIES AND LIVES"
TO PREVENT THE INTRODUCTION OF THE ENG-
LISH LANGUAGE INTO THE
SERVICE OF**

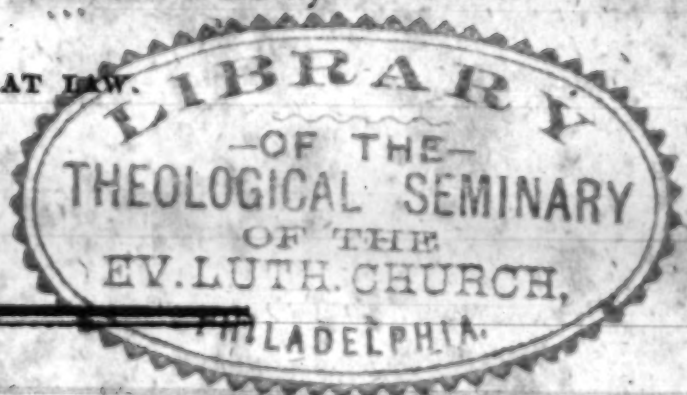
ST. MICHAEL'S AND ZION'S CHURCHES,

*Belonging to the German Lutheran Congregation, in the City
of Philadelphia.*

TAKEN IN SHORT HAND

BY JAMES CARSON,

ATTORNEY AT LAW.



PHILADELPHIA.

PUBLISHED FOR THE REPORTER.

1817.

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DISTRICT OF PENNSYLVANIA, to wit:



BE IT REMEMBERED, That on the second day of January, in the forty-first year of the Independence of the United States of America, A. D. 1817, **JAMES CARSON**, of the said District, hath deposited in this office the Title of a Book, the right whereof he claims as Proprietor, in the words following, to wit:

"Trial of Frederick Eberle and others, at a Nisi Prius Court, held at Philadelphia, July 1816, before the Hon. Jasper Yeates, Justice, for illegally conspiring together by all means lawful and unlawful "with their Bodies and Lives," to prevent the introduction of the English language into the service of St. Michael's and Zion's churches, belonging to the German Lutheran Congregation, in the city of Philadelphia. Taken in short hand by James Carson, Attorney at Law."

In conformity to the Act of the Congress of the United States, intituled, "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies, during the Times therein mentioned."—And also to the Act, entitled, "An Act supplementary to an Act, entitled, "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies during the Times therein mentioned," and extending the Benefits thereof to the Arts of designing, engraving, and etching historical and other prints."

D. CALDWELL,
Clerk of the District of Pennsylvania.

THE TRIAL

OF

FREDERICK EBERLE AND OTHERS,

For conspiring together to prevent the introduction of the English Language into the Service of St. Michael's and Zion's Churches.

COMMONWEALTH,

vs.

FREDERICK EBERLE AND OTHERS.

IN this case a bill of indictment had been found by the Grand Jury, inquiring for the City of Philadelphia, and presented to the Mayor's Court, from which, after the Defendants had pleaded not GUILTY to the Charge; the cause was removed by certiorari to the Court of Nisi Prius, of July 1816.

TUESDAY, JULY 9, 10 O'CLOCK, A. M.

The Court met, present the HON. JASPER YEATES, Justice.
The following Gentlemen were concerned in the case.

On the part of the Prosecution,

Jared Ingersoll, Esq. Attorney General, Horace Binney, Joseph R. Ingersoll, and Samuel Keemle, Esquires.

On the part of the Defendants,

Moses Levy, William Rawle, and Sampson Levy, Esquires.

The Jury was composed of the following Gentlemen.

- | | |
|-------------------------------|----------------------------------|
| 1. Daniel H. Jones, affirmed. | 7. David Shatzline, sworn. |
| 2. Stephen Bassburn, sworn. | 8. Abel Pond, sworn. |
| 3. David Snyder, sworn. | 9. Jacob Wunder, sworn. |
| 4. Isaac Reed, sworn. | 10. William McCalla, sworn. |
| 5. John Silver, sworn. | 11. David Rowe, sworn. |
| 6. William Morgan, sworn. | 12. Tristram Campbell, affirmed. |

The Jurymen having all been sworn or affirmed, Samuel Keemle, Esqr. opened upon the part of the prosecution, and read the Indictment, (*for which vide appendix*) after which the following witnesses were adduced and examined.

JOHN LONG, sworn.

JOHN GOODMAN, sworn—I understand the German language; this is a true translation to the best of my skill and judgment.—
(German petition read, vide appendix.)

ANDREW BUSCH, *sworn*—I was appointed one of a sub-committee—a meeting took place of persons desirous of having the English language, as well as the German, introduced into the Church. This was in the middle of September, 1815. At that meeting, a committee was appointed, of which I was one—and out of that committee, I and another was appointed a sub-committee, to present a prayer to the corporation.

(*Paper read, dated 26th Sept. 1816.*)

When I was bringing this petition to the corporation that was meeting in the room under the steeple of Zion's Church, a great many Germans were standing by the lanthorn post—it was dark, between 7 and 8 o'clock. When we went a little further on, we found another parcel standing in the yard—when we knocked at the door, one said, walk in—we went in, and presently after, a person came in with a large stick, like a cord stick, named Knorr. When I looked round, and saw this man, I got frightened. The Corporation received our letter, and were dismissed. I passed them just as we came—some of the persons had sticks. I knew them to be members of the Congregation. The next thing, we had a meeting about three or four days after in the school room, in Fourth-street. No answer was ever sent to the petition, we were promised one by the Corporation, but none ever came. In the evening we met—Mr. George Rehn was our chairman—when we were going to our business, I stood in the middle of the school room, in comes a whole parcel of Germans that were our opponents; of the Congregation—and as the door was open, I saw a whole parcel outside—about thirty came in—when I saw them I retreated into the other apartment of the school room, and I stood behind the partition to see what would happen—motions were made by our members, when the others would cry “yes and no”—and thus act tumultuously, to disturb the meeting—the opposition was not peaceable, but tumultuous—the noise was so great, that we could do no business—we could not hear one another—one Mr. Burckhardt, a member of the Congregation, wanted to step up and speak to them, to be in peace—one Christian Smith, went up to him and said, “you deserve a rope, you ought to be hanged long ago; you have sworn a false oath; perjured yourself, and you ought to be hung;” I saw some fists going to strike; some of them struck, but I did not see who. I stood behind the slider, and could not come so near as to see all their faces; so in fact, we had to break up our meeting, and no business could be done—the chairman was a weakly man, and very much frightened—we retired, and appointed another day. The object of the meetings and times, were generally known. I thought we had no right to keep the thing secret. When our hour was coming to meet, four or five days after, there were the seats, occupied by the opposite party, they came so much earlier than we could.—I spoke to the chairman, Mr. Eberle, and asked, “what! Do you go to meet here this evening too?”—he says yes—I said, then we will withdraw—we went in the other room and met by ourselves—they did not interrupt us then—we staid there peaceably. I heard

some saying as I went out, "sweep the Irishmen out." We wanted to do our business, only they disturbed us—they sung, and then had a kind of prayer, and then made such a noise, hallooing and knocking, and God knows what they did—we could not hear one another speak—we could not do our business—it was not possible to hear our own words. Some of them, would not leave the room when the candles were all out but one. Mr. Gassner the sexton, attends the school room—we did not stay above half an hour in the room after we began.

I attended their meeting in the Northern Liberties once; I believe in December last—Frederick Eberle was chairman, another man was secretary, and Christian L. Mannhardt, speaker. It was begun with a couple of verses that they sung, and a prayer. After this, Mannhardt got up and kept an oration. Says he, "Brethren, they want to steal our property, to rob our Churches—they have associated themselves into a society—their articles were, that they take in Irishmen, Frenchmen, Englishmen, and even black men to their Churches, and we shall oppose them with all our bodily strength. There were about 200 or 250 there, the room was as full as it could hold. Then he said, in the corporation, some members spoke the English language, and that should not be allowed any more. When this was mentioned, a whole parcel jumped over the benches, clapped their fists together, and said, "we will come and take them out by their ears"—they behaved like madmen, almost. Mr. Smith was one of the foremost to jump on the table, &c. The president of the society had to put the question whether there should be any more English. I came away after that—they broke up with singing and prayer, like usual. I am acquainted in the Congregation a good deal, and used to speak to them about keeping the young to the Church. One day I spoke to John Donneck, I used to reason with him, how necessary it was—and he said, before that should happen *blood must flow* in the Churches, before the English should be introduced. I said, can this be possible! He said, it sometimes happened in England, that these things happened, and a minister would be thrown from the pulpit, and the government took no notice of it. I told him we had a good country here, it was very different. He then started away out of my house, and I never saw him since, tho' he used to frequent my house once or twice a day. The election took place at the day, the 6th of January, 1816, about 5 o'clock in the evening, between 5 and 6—a great part of these men were intoxicated, these Germans, the opposite party to us. When I walked into the school room, a person struck me on the elbow, and I said, is this the way to behave like Christians? I was carrying a pitcher of beer to the Judges of the election, and some beer like to have come into my face—and it was so dangerous, that about 6 o'clock, I went home, I was afraid something would occur.

Cross Examined.

I belong to the Congregation; was one of the party for English preaching; the Congregation was divided; there were respectable

men in both parties ; I don't know whether they were all citizens, not all respectable ; one came on Thursday from the criminal jail and voted at the election. This man was bound to an Apothecary in Market-street, I have forgot his name ; only one. There was an invitation sent to the different persons ; it was not published in the newspapers, it is not usual in the Church. It was one Wagner, who served the notices ; I served some ; we would help one another ; I did serve notices to persons, not known to be favourable to English preaching ; some of them known to be opposed to it. I gave some such an invitation, that we had an upright case and did not want to hide our light, and invited them to attend our meeting. There is no notice given to call meetings, except from the pulpit. I can't tell which meeting this was presented at, but I believe, the second or third, when we passed the petition ; most part of the Congregation I believe, were opposed to the English preaching, I can't tell as to the majority ; I attended the election in 1816, I can't tell whether there were legal voters or not ; whether legal voters or not, there was a majority ; no vote was taken on the subject of preaching ; but each party put up candidates who were on one side favourable to the English, and the other to German. It did not give rise to the whole quarrel ; It did so far as the election goes ; I was at the election when it first opened ; Mr. Hoeckley and Lehr took their seats as Judges ; they were not appointed, they took their seats themselves ; I have been in the corporation ; formerly before the election would be held the President would say, Gentlemen, we want Judges, and he would name one, who would say that he would have nothing to do with it ; then among themselves they would choose another ; there was no law, only they would make the election themselves in peace ; I can't say when the meeting in the Northern Liberties was ; I had no notice ; I went there because I had a right to go ; it was said, an improvement was to be made, to have a school, in which English and German should be taught, and I had youngsters, and thought I would go and see how that plan would be laid out. I had no occasion to mix with the members. I did not keep it a secret ; some may have known it ; many others in favour of English were there, I think there were some, I am not sure ; one Plank, Matthias Plank, was there ; and he is rather on our side I think ; we went by agreement, we accidentally met in the street. Philip Kreemer told me of the meeting. I never saw this paper (*conspiracy paper*) before a great many told me of it ; I heard of it before the disturbance at the election in January ; I knew Mr. Witman had it ; so I have been told ; may be I heard of it some time before ; I can tell you when ; when we brought in our petition this came after it ; may be the same evening ; I can't judge, I was not present when it came in ; I do not know any thing about the time this came in. I never did take an oath that I would support the German preaching ; the duty of the corporation is to do the best they can to support the German Lutheran Congregation ; I did the best I could.

JOHN A. UHLER, *sworn*—Some time last December, I was one of the Vestry, and Mannhardt met me in Cherry-street; says he, I hope you will meet the corporation this evening; I said, I would; says he, if any person had told me this, eight days ago, he would suppose it had all come out of the hospital; he desired me in particular, to be there, for said he, a document will be laid before the corporation with a considerable number of signers, and that not half an inch must be given, otherwise blood must flow; all he said was in German; that is the true translation as near as I can tell it; I believe I said, not quite so bad; and bid him good evening; it was about half an hour to sunset; I went home; I live in Front-street, and then went to meet the Vestry; but I must have come late; there was a great mob of people; I found some were not of the Vestry, either ten or twelve of them there; I took a seat; there must be sixteen to form a quorum; we had a short discourse; presently five or six came in and we formed a quorum; one of the ministers makes a prayer; a petition was taken up; I moved it might be read again; it was in the German language; it was read a second time and the door opened right against me; there were two voices; one said, the corporation is sitting; presently Knorr came in; after it was read the second time, it struck me from what I heard in the street, met and saw, that it was not right to be there, and proposed to adjourn; according to what fell, I thought one might have got one's brains knock'd out; we were but a short time together, and when we broke up, I perceived nobody but the Vestry; This was the paper presented, (*conspiracy paper*;) it was in September; no other petition was presented that night.—A short time before this, a petition was sent in, which was in the English and it was rejected to, because it was in English, tho' our secretary translated it very correct. I believe on the part of the English party, a second petition came in German; the antipathy seemed to me to be because they asked for English. On the day of the election, generally a week or so before the Vestry meet, and appoint Inspectors, and do some other business; a short dispute arose in the Vestry, and I said that the Corporation should appoint Inspectors; the German party carried it by the casting vote the President should appoint. I beg'd him to appoint in due time, because I was afraid of what might take place. He made answer that he had time enough, and I said then, I dreaded the day of the election, since they would ask counsel's advice, and bloody work might follow it. I was there from the beginning of the election; I did not consider it legal to appoint. I was there a few minutes after they walk'd out from the Vestry; an enclosure was made where the Inspectors and Judges met. Mr. Lex belonged to the Vestry, and wanted to go in, and some persons catch'd the tail of his coat and pulled him down; he made a second attempt, and they cried out, "kick the rascal out;" made out in English as well as they could; Dr. Helmuth expressed himself, Gentlemen, this gentleman belongs to the Vestry, he has a right to go in; but he made no further attempt; generally the incomings

and outgoings are mentioned, so as every person may see how, the money is expended. After that they generally take the votes; Mr. Witman got up and said, "I move that we appoint our Inspectors, those who are in favor of it will say aye; to the best of my knowledge, there were two ayes to one no; he moved that Mr. Wagner and John Geyer should be appointed; Wagner was outside and wanted to go in; I stood about seven feet from the enclosure, and near about that distance from a stove, where they had him like a child in their arms, and he crying out, for God's sake don't choke me." I got on a little school bench, and one Mr. Woelbert stood by me; they overset the cannon stove, and a fire like a young hell and a pipe came towards us; and I carried the pipe behind us 'till the disturbance was most over; after that was settled and the pipe was out of the way, some persons got a bucket of water and threw it on the fire. A peace officer was there, Vanderslice; he commanded peace; a man was there who said, he would tear every hair out of his head, Bohl I believe; I found by laying hold of his arms he was determined to get hold of him; several came side ways and asked me if I knew that man, &c. Then I withdrew and staid with an acquaintance 'till near dark; and in Fourth-street, there was a great crowd and pushing and pulling; I went in, and the school house was nearly empty; they said none of their brothers should be taken to jail; I do not know whether Wagner was in; the first I saw was Hoeckley and Lehr taking votes; they acted. The Inspectors were formerly chosen by the President or Vestry; they are always chosen beforehand on former occasions, and I have known it five minutes before. A bye-law gave the President the power. Mr. Cope was very much abused, and I mentioned to him not to take any notice of it; young people about eighteen or twenty did it; I left the house, and I know no more about the election.

Cross Examined.

I belong to no party, I am in favor of English preaching; I did not join a party or meeting; I objected that I was in the Vestry, and did not meet; I was asked to by both parties. There might have been constables there; I do not know that Vanderslice was employed some days before. I knew nothing about Hoeckley and Lehr taking their seats; I never saw them 'till after I gave my vote to Mr. Lehr; I said, that I thought it was wrong; it was as much as one's life was worth to say any thing to the Judges; my intention was to keep myself peaceable, I thought the election illegal; not above ten minutes after nine, I went. Last members not in; the tranquility of the election was grossly disturbed before Mr. Witman proposed Inspectors; because one of the Vestry was laid hold of and it was said "kick the rascal out;" this was a quarter of an hour before Witman addressed them; no votes were received before he got up, but the other business was gone through. We did not vote for English or German; the German party had a considerable majority; I never saw a person nominate before Inspec-

tors, as this was done; no person read the opinion; I did not stay until the votes were counted.

WEDNESDAY, JULY 10, 10 O'CLOCK, A. M.

JOHN A. UHLER, *called*—I did not go into the enclosure, because I did not think it safe, without having my limbs broken; because they had used one very rude, and if they could have reached Witman, they would have tore him limb from limb.

GEORGE WITMAN, *sworn*—I was elected a member of the Vestry in January, 1815. Before that time the churches were observed to be thinly attended. Few were there, but old persons and very young children. Conversations took place, as to how it should be remedied, and English preaching became a general subject, and a good deal of pains were taken to ascertain the opinions of old persons. The old members were waited on; very few young persons understand the German. Mr. Geyer, Mr. Rehn and myself appropriated one morning to this purpose. Among others we called on Mr. Fricke, who was pleased to see us, and said, he knew English preaching was necessary. We called on Mr. Hoeckly, who said, he did not go to church. Dr. Helmuth was called on. First meeting to be held, was on the 21st, but adjourned to 25th September. We were interrupted after going into business by a number of persons, who came in a noisy and tumultuous manner saying, they could not understand, as we were talking Irish; that we should use German; they were noisy and tumultuous voting yea and nay to the same question; they evidently came to prevent our proceedings, and a great part of us went out the back way; they broke us up; there was no regular adjournment. No further business was done, except to appoint a committee of conference. On the 26th, the Corporation met. On going to the Vestry that evening, I passed by a collection of twelve or fifteen persons near the church yard; Dr. Helmuth was among them. On going through the yard, I passed through a similar collection of people standing there. After the Vestry had been some time in session, Mr. Busch handed in a paper from the committee of conference. At this time, a paper, enclosed under cover, was lying on the table, which was read. A German paper here before the court; either during the reading or immediately before, the door was several times opened, and one person actually intruded himself. The reading of the paper, and other circumstances, created such an impression on my mind, that I went next day to get a copy. Shortly after I passed Mr. Weckerly, and asked if he knew the contents; he said yes; and I told him, if he did not like the paper, he had better take his name from it. I left it with him a few days after, he told me, he knew perfectly well the contents, and that a parcel of people were ready to pounce upon the church property, as a cat upon its prey—Mr. Meyer's congregation; and that the Germans had property enough to support their Clergymen in case we all left the churches. I then asked him in what situation they would be placed, if the English party united with the Congregation of Mr. Meyer's. He replied,

that any men who would propose, or many men that would support it, were damned rascals. A second meeting was at the school house, about ten days after the first. I went early, and went in consequence of Mr. Rehn's suggestion, to see Mannhardt; a week or ten days after the first. Presently we saw him come, leading an old gentleman. Rehn questioned him, and Mannhardt said, he could not pledge himself for the conduct of any set of men. Mr. Rehn asked what the objects of these persons were, and whether they meant to disturb the meeting. I did not know of any meeting to take place that evening, except ours. After we had been in business, a number of persons came in posses, saying, some of us were traitors; that they could not understand Irish; that these in the Corporation had sworn false oaths. Burckhardt addressed them, and said, what they did not understand, would be explained to them, if they would have patience. He was called a Judas, a traitor. It was said a rope should be brought, and he should be hung. There was considerable noise and confusion afterwards.— We went some one way and some another; we were interrupted; another meeting was called, a week or ten days after, at the school house in Cherry street. When we came, to our surprise, we found the room occupied, by persons who had set themselves in opposition to us. We went into another room, and were obliged to wait in consequence of their singing, for a considerable while.— After their singing, we heard several wraps, but they did not interrupt us much, and to the best of my knowledge, we got through our business that evening. In consequence of the disposition of these people, we determined to call our meetings elsewhere; and we met up stairs, shortly before the election. On the 6th January, I went to the school room, after 9 o'clock, (I was in the Vestry) a number had their tickets in their hats, having on them the U. S. eagle. I never saw any thing like badges before; the tickets had the eagle at the top, and were on smooth, better paper than usual; I had a conversation with Frederick Bremicke, who acknowledged to me, that he had been one of the persons who seized Mr. Lex, to prevent him from going into the enclosure. I don't recollect any person being in the enclosure except Mr. Long, Mr. Birnbaum, Mr. Lehr and the two clergymen; the business of the day was told by Mr. Helmuth, and the reading of the accounts was commenced by Mr. Long, and I believe during the time of the reading, Mr. Geyer came into the enclosure, who was a member of the Vestry. After reading the accounts, I arose upon a chair, and observed, that the right to choose Judges was in the voters, and that I was supported in this by the opinion of the Attorney General, which I held in my hand; I therefore moved, that John Geyer and William Wagner should be Judges. Noise and uproar followed. I heard cries of "pull the Irishman by the hair; turn him out." No Judges were appointed to conduct the election, either in the Corporation, or on the morning of the election; by *public* appointment I mean, not mentioned at the time; when I made the motion, a number of persons were shaking

their fists at me, making terrible faces and gestures. On observing this, I got from the chair, and moved it to a more secure position, where I did not suppose I could be reached by any person outside, and not knowing what the violent temper of the persons might be, I disencumbered myself of my surtout, that I might the more readily make my escape. This noise being settled, in a considerable degree, I called on those favorable to say, aye, and the others, no; I believe a considerable majority were ayes. Mr. Wagner was outside of the enclosure, and was called for; he was, seized hold of on his attempting to get in, by a number of persons, all strangers to me at the time, and I can't recollect any since, except Buehler and Schweichart. Wagner was raised on the shoulders of the people; his legs and part of his body on the top railing of the enclosure. He called out, "for God's sake don't take my life," or "don't choke me," or both. Long and I attempted to assist him to get in by lifting him over. Buehler, on seeing this, jumped over and said, he was Wagner's friend, and pushed us aside; and almost at the same moment Wagner got inside. Wagner appeared exhausted, trembling; his surtout and side coat were torn. During this scuffle the cannon stove, warm and filled with fire, was thrown over. Immediately after Wagner got in, Lehr who was inside, and Hoeckley who had got in during the scuffle, were receiving tickets. Observing this, I stood near to them, not interrupting them or any person, and took a blank book to make memorandums of illegal votes. Hoeckly took the ink stand from me several times. On this I received a lead pencil from one of the bystanders; I had not had it long before the book was snatched violently from my hand; more than half a dozen were violently engaged in keeping Wagner out, in the scuffle as many as could get hold of him. At the time of taking the book there was a general cry of, "out with him, the Irishman;" some person looked over my shoulder and said, I was writing Irish. In consequence of this animosity towards me, I thought it necessary to move to a more secure situation, and went to the opposite side of the table. In the course of the forenoon Buehler ascended the railing, and moving his hat, turning it round, said, it is the will of the Congregation that he should be put out, and a general cry took place of, "out with him." I remained there all day; nothing particular took place except a general scene of turbulence; about dark there was a cry of, "Mannhardt comes, our Captain comes;" and I saw very distinctly the persons in the school room, making way on each side for him, and several other persons who were with him, to go up and vote. I continued during the day to make notes, and handed them to my friends. I was repeatedly cautioned; Buehler told me, they had plenty to drink. I saw persons drinking, and particularly Almendinger; I do not know of any person being bribed; I saw Lehr give a glass of wine to some person outside of the enclosure. For some time after the election, I always carried a cane when I went out.

CHARLES EBERLE, *sworn*—One evening in the spring of last year, I was in our school house; Mannhardt came in and told me that the Corporation had met; that Meyer's Corporation had sent a petition to get leave to preach Irish in the school house at Camptown, and that some members of our Corporation would favor it; and particularly Mr. Witman, Mr. Lex and old Haas—"who would have thought, we would have elected members into our Corporation of such kind, but they shall not succeed, these traitors." About two or three months after, he came to my house in Sixth-street, and said, the plan for Irish preaching in the Camptown school house had been defeated; that he did not think they had voted for such men as Witman, Lex and Haas. I observed that I was sorry that the Congregation was uneasy about it, but that I thought the members in favor, did not mean any harm by it, or had any bad intention in it. Mannhardt said, "I know what the intention is, they intended to introduce Irish preaching into our Churches; but before that shall happen, *blood shall flow*." I said, O! O! Mr. Mannhardt, and he repeated, "*blood flows*." Then he said, "I once delivered a speech in the school house at Camptown, by which I stirred up all the Camptowners, I have it in my power to do it yet, and I shall do it again." Some of them came to my house, and regretted it had happened. I was a member of the Corporation in 1806—7—8. Generally a few days before, we met in the Vestry room, went into the accounts, and proposed some who should be appointed; the nomination was always made publicly in the Corporation; members of the Corporation were in the habit of going there quietly. I never saw any thing like wine or beer on the table. Elections were always quiet and orderly; excepting twice, when by some members of Meyer's Congregation, it was proposed that the Judges should be appointed by the Congregation; once by Graeff who shewed a paper, saying some court or body gave it, that the Congregation had a right to nominate the Judges; no violence was used; no person struck; a little kind of noise, but quiet immediately. The German paper is Mannhardt's hand writing. On the 6th of January, I went between 12 and 1, and it looked a little noisy; the gentlemen said as I came in, if the Irish go so, it goes very well; Mr. Lex, Mr. Wagner and Krebs were with me.

JOHN GEYER, Esq. *affirmed*—I was not in the habit of attending the meetings; I was in the Corporation when this petition was read; several persons came in, who had no business, and one person who came in had a cane or cudgel, and I was fearful of an attack; I desired two constables to attend and keep the peace, in case of riot and disorder. My fears were not groundless. Witman got up and made a motion that Wagner and I should be elected, and a considerable majority appeared in favor of it. Wagner was seized; Buehler caught him and threw him off, but he did not fall to the ground, in consequence of the number that had hold of him; some by the feet and some by the neck. Wagner said, "don't choke me;" one person then had hold of his throat. They

are all strangers to me. I told Mills to disengage Wagner, and he jumped up into the rounds. A cry was made during the morning to throw Witman out; Buehler jumped up and said, you were engaged this morning, and you must desist; he said he would not; but did; I did not continue there the whole day; in the evening I dispersed several mobs, and I never saw so much riot, or so much drunkenness; a collection of people with Mannhardt at their head, were in Indian file staggering after him. I saw this man, Reisch have Wagner by the throat. He led them on towards the school house, in Cherry alley; this was about dark. I was present at the corporation when the motion was made to appoint the Judges, and they refused, because a resolution existed that the President should do it. The President was asked several times to appoint them, and he refused; I asked him myself; on the day of election, I went there to ascertain whether the President would appoint them; but he did not on that morning publicly. It was at one time the practice of the Congregation to appoint them, on the morning of the election. While I was there, the President appointed in the Corporation.—I never knew an election held when the Judges were appointed, except publicly by the Corporation, or by the Congregation.—Badges were used, and tickets with eagles.

Cross Examined.

I never saw any colour or mark on any ticket at former elections, and I have generally voted. On the morning of the election, I requested the constables to attend, or the day before—certainly on the morning I was there part of the time of counting up.

WILLIAM WAGNER, sworn—On the 25th September, at the first meeting, I was present. We got there in the evening, some time after candle light, appointed our chairman and had just commenced, when I heard a noise, and saw from twenty to thirty people enter; men; they placed themselves near and about the door. Some came forward and stood near the desk 'till a motion was made; they then disturbed us with noise, crying out "aye" and "no" to every question. Many went up in an indecent manner to the chairman with hats on, &c. It continued that way the best part of the meeting; it was impossible to take a question. In a riotous manner near the close, they used threatening language and gestures:—Smith was one and Schwartz:—Smith said to Burkhardt, that he had turned Judas and deserved to be hung. Soon after that, the noise and tumult became general, and we found we could do nothing, and had to go away; many, and I among them went the back way:—I did not think it safe to be among them. Another meeting, a few days after, was called; we came at the same hour and found the school house full:—I asked why they met; they said, they had business of importance in relation to the schools, and the other school house was not large enough. We then retired into the adjoining school room, but the noise was so great we could not proceed.—There was various noises, singing and knocking against the partition, but they finished it with a psalm. We continued, and appointed a committee to draft an address, I be-

lieve, and then adjourned. Mr. Long at the election, was reading off the accounts. Immediately after, Witman got up, and said he had a paper, that the right of choosing inspectors was vested in the Congregation. A great noise and tumult arose, "pull the Irishman out, &c.!" When subsided, he put the question again and it was carried, two to one. I did not think it safe to go in. After being called several times, I went up to the railing and put my hand on the top rail, when I was caught violently by several persons, and violently pulled down:—I then made a second attempt, and was again caught, and in the scuffle the cannon stove was thrown over about five feet from me.—I then felt the heat very severely, and found I was in danger of being burnt or torn to pieces, and got out with a desperate effort. I was much exhausted; my clothes nearly torn off; shirt collar torn. Mr. Buehler jumped over after me, and said he was determined I should come out. I saw others in the act of getting over, but I was engaged with Buehler; and Mr. Geyer interfered, and reminded him he was breaking the peace, I had a right to be there. Buehler then stated, he was my friend, and did not mean to hurt me, but I should come out for I had no business there. I then saw Hoeckley and Lehr, taking the votes. Through the day, violence was offered to several of the persons there. Witman was assaulted and had his book taken away; and Buehler got up on the railing—another noise sometime after—and ordered Witman out, saying, he should be taken out by the hair of his head. Drinking was there. I saw some intoxicated either with rage or liquor. I was in the enclosure and heard a noise, "make way for Mannhardt—here comes our captain!" A lane was formed, and he came through it with a person at each side of him.

GEORGE KREBS, *affirmed*—I was elected into the Vestry first in 1790; I continued off and on for twenty one years. From 1790 and before, the Inspectors were always chosen by the Congregation assembled in the school house, let them be few or more. The Corporation always met and attended for the purpose of keeping good order. No enclosure was known untill 1806 or 1807. I have known a person in the enclosure using the pens, &c. who was not a member of the Vestry. John Graeff did so. In November, the second Monday, I was at a meeting of the Charitable Society, composed of members of the German Lutheran Congregation. After opening the business, and in the height of business, Charles L. Mannhardt came in at the head of a number of men, may be one hundred or one hundred and twenty. He addressed himself to me; he was not a member of that society, he had been once and declined:—He said, "Mr. President, I introduce to you a number of good and real Germans, and wish them to be taken as members of this society, they being members of the German Lutheran Congregation." I objected to the motion, on the ground that they were not orderly members, and that Mannhardt had not characterized them properly; I being opposed, and finding myself in an awkward situation, being used to having order and deco-

rum, proposed, that if a real member would make a motion which would be seconded, I would put it—that was done; there was not more than thirty belonging to the society; when I put the question, they all voted themselves in by a loud voice. After they had been voted in so, I took the liberty to call them to order. One of the self elected members then came and put himself in an attitude of fighting. Almendinger came up to the table and in broken English said, “Mr. Krebs, the next election,” with doubled fists. One or two of his friends asked him to withdraw and he did soon after this. There came one more direct to me, named Christian Smith, who addressed me in these words,—“Mr. President, if we can’t gain the next election for church wardens and elders by fair means, we will take the command of our Saviour and smite with the sword.” I not being acquainted with any such passage in the scriptures, but completely the reverse, I called again to order; knowing this to be profane. I hastened the business on as much as I could. I resigned my membership in the society. In 1850 was the first appointment not by the congregation; I was then, if I recollect right, not in the corporation. In 1806, a proposal was made, that on account of the great numbers, to let the judges be appointed by the corporation, and let the President next day proclaim. Since then the corporation has nominated, and the President proclaimed. I was not disturbed in giving my vote. I never saw ham and beer and wine, at any former election on the table:

Cross Examined.

I think I was an inspector in 1806—like I might in 1810. I never did bespeak wine or liquor at Miller’s tavern; this I answer in the fear of God. There was a bill came before this society for liquor, but I objected to its being paid. Never knowing a judge to be a candidate, I handed my vote to Mr. Lehr, not Hoeckley.

HENRY BURKHARDT, *sworn*—On the 25th September, as I went to the school house where this meeting was held, there was a great noise; the cry was, “are you Irish too?—cant you talk no German?” Some proposals were made to lay before the meeting, how the English might be introduced with the German, to keep the youth together that the church might not be destroyed. After much confusion, I got up and mentioned the thing was not rightly understood, and Smith got up and said, “you damned Judas, did you sell your mother language like Judas did Jesus; take a rope, make it round his neck and hang him!” A person by the name of Jacob Knoess, made use of the same language as Smith did. I stepped forward and said to Smith, what do you mean, I am for German as much as you, or more; he said, “we know you.” Speel came and said, “you better go home.” By that, one John Mackie came up and struck me on the face, and I went out of the back door. Mr. Lex was struck that evening by the same man. Sometime before the last election, a petition was sent in from St. John’s church, for the privilege of the school room in the Northern Liberties, for English preaching. Donneck came to my house and talked about it, and said, they wanted to drive the Germans from

the church :—I said it could not be done, for a majority rules :—he said, “before it takes place *blood must flow* ;” he said, “there was a great many who would sacrifice their lives, and would do the same as they did once in London, when they wanted to have English preaching in the German church, and they rolled the beer and the brandy in the church, and had a fight, and they fought like fighting cocks, and the same they must do here ; and if English preaching would come, and a preacher would go up into the pulpit, he knew one Theobald Smith, who would bring his hammer along, and hammer him out of the pulpit.” On the day of election, Theobald Smith had a stick, who is not in the habit of carrying one. Cruse had a club about two feet long, and not like a walking cane. Buehler, Jacob Shuh, and one Reich, laid hold of Wagner. In the afternoon of election I stood at the corner with some other gentlemen, Shuh came up and spoke to Stief about English preaching, and said, “as for you, after a while, you will be just as much as an old hat you throw in the air, and if I would say another word he was the very man that could tear me all to pieces, and poke me in the gutter ;” I told him he had better try it. In Fourth street Jahns said, “they had plenty of beer and wine, and victuals to eat, and they live very well.” I never knew them at former elections.

THURSDAY MORNING,—10, A. M.

GEORGE KLINE, *sworn*—I was at the school house about 4 o'clock in the afternoon. I went to give my vote. I found they had two barrels of beer emptied, and a great wet as if spilled, and in the cupboard, crumbs, puddings, sausages, &c. Mr. Mannhardt asked a person who came in, to partake of wine, he presented beer—it was in a glass tumbler. I went to Cherry street and gave in my vote ; I returned, and saw Mr. Mannhardt give another person a dollar note to go and spend, and told him he would wish him to go and bring in as many German tickets as he could. I did not hear any thing about ammunition. He told him “he had been hard at work that afternoon, and he thought he ought to allow him something for his trouble.” I heard blows given but I did not see any, on the table and on the stove. I saw Loos, I turned to see where the blows came from, and could not see any stick, but saw the point of a man's stick through a man's cloak. I made no more to do but went out of the school house. I saw Yager there, Millar. I heard a little combustling there.

Cross Examined.

I was a member of the congregation. Witman served a supæna on me. Mr. Witman and Mr. Lex took down in writing what I said. I was offered nothing to drink. Mannhardt said, “our provisions ore out now and I have none to give you, but here's a dollar note, and you can go and spend it, and you can go and bring in as many votes as you can, and at 8 o'clock they should try to be altogether there, that was the limited time, and then they should be on their guard.” I saw two or three sleighs at the door before I

came in, and after I went out, both times of my being there. I was not at a tavern or beer house in Cherry street that day.

GODFREY G. COPE, *sworn*—I don't know Flegler; but as I came in, Speiss asked, "what the devil are you doing here, you are an Irishman;" I said, why Speiss is it you? he said, "yes, you ought to be kicked out—out with him." He did it with a great deal of anger—he was a tenant of mine. After that I saw Wagner engaged with Shuh and Buehler—had him off the ground; there was a good many more, and Wagner said, "don't choke me for God's sake!" A bustle ensued, and they upset the stove. I walked up and said get out of the way, I want to go up and vote; he said something—John Piper—and I said, you snot nose; and he said, "d--n you, I have taken the sacrament three times;" he was pretty well intoxicated. I walked up and voted, and Piper said, I had no right;—Hoeckley said, "who said so," and took my vote. As I returned, I met Flegler, who lives in North alley, and I said, daddy you seem angry, give us a pinch of snuff; he said, "yes by God, *blood shall flow* before you shall have your ends answered;" he did not know my ends. I said, daddy, you have one foot in the grave and ought not to think of such things; he said, "I know you," and we parted. He appeared to be intoxicated, and I am well convinced he was so, for I have known him these many years, and know when he is so, and when he is not. In two or three hours after, I saw him, and asked, if he was still of the same opinion?—he said, "yes, *blood should flow* before our ends should be answered." I was in the vestry nine years on a stretch. The vestry were in the habit of attending; the judges were nominated the first year I was there by the congregation; after that, the corporation named them a day or two beforehand; I came in in 1805—the President named them in the vestry: I saw a ticket stuck in Gottlieb Schwartz's hat, same way as they have it at the general election; he told me "if I did not like to see it there, I might look into his b—m;" in a worse way than that, which I could not repeat here; and he blackguarded me from time to time as I saw him. I had intended to stay to the end of the election, but I was threatened so hard. Schwartz said, about 5 or 6 o'clock, "only you stay a little longer and you will get what you deserve." I was afraid, and I retired from the fear of being beaten. I was threatened as much as six or eight times.—A day or two after the election, Charles Lex said in market, "what do I care, I got nine dollars for my garlicky sausages that nobody else would buy, and they eat them like sugar!" Mr. Woeckerly said, the last court in the Mayor's court, "you are a set of d—d eternal rascals!"—I said, for why, he said, "for bringing in this suit in court;" I said, don't call me a rascal, I am the father of thirteen children.

Cross Examined.

I came here voluntarily. Witman read a paper to me but did not levy any thing on me. Mr. Henry Helmuth persuaded me to go. I was a candidate but did not get in.

PETER LEX, *affirmed*—I have been a member upwards of forty

years. I have been in the vestry. Formerly inspectors and judges were chosen by the congregation on the election day. The accounts were read off, then we called out, I propose such an one for inspector, &c. then he who proposed put the vote;—this was altered when the dispute arose about English preaching. The secretary said it could be done by the president and corporation, who found it necessary to have a small place partitioned off for them. It was spoken of in the vestry always, and the next day the President nominated such as they had agreed upon.

JOHN LONG, *sworn*—The 5th January, this year, the sexton came to me and told me, I was requested to attend as treasurer. I attended; the gentlemen were there—the committee of accounts had a secretary; we went through, and I was requested to attend next day. Dr. Helmuth was there, and others, and we went there about 9 o'clock. Several persons were there with eagles and tickets on their hats. We went in and sat down, and Dr. Helmuth read the rules; he then delivered a prayer, telling them to behave as christians and brethren—I fervently wished that it might be so. I read off my documents to the satisfaction of every body. I heard a voice say, "let Mr. Lex come in." Dr. Helmuth said, "let him come in." By the talk I heard, they prevented him. Witman stepped on a chair and held a paper in his hand, and nominated Wagner and Geyer, and the ayes appeared to have it. Geyer was in the enclosure, and Wagner in the middle of the school house:—he got across the railing, and I said to myself, here is a man will be killed; and I saw a smoke, and the stove was knocked over. I went away. Wagner must have been two or three minutes on the railing. I was always a peaceable man—I went to several and tried to make it up.

Articles of Association of St. Michael's Society.

We only begged, we only solicited some place, either of the churches for the English preaching.

Last court I came out of doors, Mr. Uhler told me that Weckerley had called him hard names, and attacked him. I did not want to make a rumpus.—Mr. Weckerley has no children.—Mr. Mannhardt has none either.

JOHN ANTRIM, *Clerk of the Mayor, affirmed*—A number of the persons came forward voluntarily, twenty or thirty, without being called on.

JOHN NEWMAN, *sworn*—I frequently saw Smith, who said "they had lads; that there was a German vessel here with a number of sailors on board, and that they intended to keep it here until the election was over." This was about three or four weeks before the election, not more. Smith was a Baker in Lætitia Court, with crooked legs.

CONRAD RIPPERGER, *sworn*—The first meeting I attended the society in September, a parcel of men entered the room and began to behave in a rude and violent manner. This Christian Smith was there, and very riotous. Burkhardt got up and wished they would behave quiet. Smith said "he deserved a rope."—Mackie then struck Lex. On the election day Witman got up with a pa-

per, &c.—A large majority, at least two to one were in favor of the nomination; Bealer and Shuh were very active; Reisch too; I stood on the school bench and had a fair opportunity of seeing. The stove was pushed over by the crowd, but no further damage done. I saw Schwartz, with a ticket on part of the hat with an eagle, which they called a bat, and he said, "I've been in many a fray in this country and I mean to see this out." I returned about eleven o'clock and met Cope and Lentz, who asked me, to go down to the Mayor's office to send peace-officers to keep harmony there; he sent some, but they could not keep peace. In the evening I went as they were calling on the votes: Smith, Mills, & M'Ginley were there and were about to take the noisy person away, when Christian Smith stood on the same bench and said, this is a German brother, and you German brothers let us assist him, he shall not go to jail:—At that time it was like a swarm; they went out in a great tumult, and a riot began, up to the corner of Fourth and Arch, and there must have been 2 or 300 persons implicated:—They rescued the man—I saw him torn from the officers at the corner of Fourth and Arch streets. The affray that took place between Vanderslice and Speiss, Weckerle said, he had no right there, he said, he had, when it was necessary to keep the peace.

Cross examined.

When the noes were called, one person would say no, several times. When Witman was in the enclosure, Chur repeatedly requested Bealer, to bring him out by the hair—he seemed in an ungovernable passion. Both before and after the constable struck Speiss, Weckerle made the remark, "I have been a member of the church these twenty years. My testimony has been reduced to writing.—I have seen peace officers there, Hess, Burkhardt and half a dozen others:—"I did not know who was to run, before the election—I had not been informed that such a motion as Witman's was to be made. Hess does not belong to the congregation, he belongs to the Calvinist or Presbyterian church.

JACOB MECHLIN, sworn—I was present when several voices said, "let us go for our *Hauptmann* or head-man." I was standing in conversation with Mahany; they went out and soon returned, crying out, make place, Mr. Mannhardt is coming, and some voice said, "the Saviour is coming." He came up like a Sergeant's guard. Bealer was at the head, Mannhardt followed, and Charles Lex in the rear of the line, and they were marking time like soldiers. I saw Mr. Mills in the school room seated in the window, a person came up (in sitting down he knocked the pane of glass out) and told him, "he had no business there;" and Mills said, "speak English, I don't understand German," and the person then knocked him off the bench. I caught hold of him but he made his escape, got a stroke over his eye and he fell on his back. Smith came in some time after, and said, "there is a German brother in distress and he should not go to jail," and a number rushed out. Judge Geyer was assisting Hart, M'Ginley and Smith.

At the first meeting, Smith, Mackie and Dorneck came up.

Mackie struck Lex, as he told me immediately after. Their habit was to harass us whenever they could find us—drove us out of the school house—then we met at the Commissioners Hall in the Northern Liberties and afterwards at a private school house. Weyman was one of the first that mounted the railing for the purpose of tearing Witman out.

GEORGE REHN, *affirmed*—There had been several meetings called by the association, one of the meetings was to be held at the school house in South-wark. I went to the school master to see if he would furnish us with wood, &c. As soon as I could leave my business, I went there; when I came in, I found a large assemblage of people, and thought we would have a large meeting, but found them to be those who had opposed us before. I found the door locked. One man told me, that I had taken a great deal of pains to establish the school; says he, “you shall not be at a loss, we will open the door;” they did so, but kept possession, and finding nothing could be done, I went away. Mr. Dreer was there, and Caspar Pickle.

Q. You did not mention the time of this meeting?

A. No sir, I think it must have been in the latter part of October. There had been several meetings previous. I could not charge my memory when it was.

Q. Have you recollection of any circumstance additional to what has been stated?

A. I cannot say. The committee first appointed, came and asked me if I would favor them. I told them I would for the sake of my children, not for myself, because I understood German. I advised them to get some others. Mr. Geyer was called upon then and we called upon Mr. Fricke; we told him, we came for the express purpose of having English preaching; that some had gone away, some to St. Johns, because we had not it. He said he “could set in his house and hear a sermon and never went to church.” We went to Hoeckly, who said, gentlemen, “I will give you no opposition, I will worship God in my own way according to my own conscience.” We thought we had gained a great point, two of the most severe in the opposition would not oppose us. After some days we went to Mr. Helmuth.

(*Translates.*) The proceedings of the settlement of the yearly accounts of the church on the election day. 9th article—Regulation—Confirmed 21st December, 1805.—“If any thing more shall appear on the ticket beside the names, or if two or more tickets shall appear together, they shall not be read off, and shall not be valid.” This is the book that has the charter and bye-laws in it.

Cross examined.

Q. Were you in the corporation at the time this bye-law was passed?

A. No sir. I had been in it, in 1804 I was elected one of the wardens. I served three years, when I was elected again, it had been usual to appoint on the day of the election, it was proposed that the congregation should appoint.

Q. The constitution does not vest the appointment in any particular body?

A. No sir.

Q. How long has this difference prevailed in the congregation?

A. I knew nothing of it, and I believe it was not agitated until September last. It originated in 1804, previous to the separation; after the separation it remained quiet for some time. I myself and others, found it difficult to educate our children in the German language, and therefore were forced to take some means to introduce the English.

GEORGE KREBS, *called*—Q. Have the goodness to look at that pamphlet; what is it?

A. After the gentlemen had endeavored to establish the German preaching, it was at my instance, I thought that the German was now so secure, to let the children and grand-children have their due. I thought it right to take some steps for that purpose. Beidelman, Woelbert and myself, appointed a committee to see what could be done. After a deliberation of three months, we had this done. This is the report signed by the committee in English and German.

Q. Was it before or after this publication, that you offered the Germans one of the churches and the largest school house?

A. After.

Q. Were there not two editions, one published in 1805, and the other in 1816?

A. I know nothing of that of 1816; but this was after the one of 1805.

JOSEPH INGERSOLL, Esq. read the report, and the answer. (*Vide appendix.*)

JOHN A. UHLER, *called*—Q. Were you ever abused by any of the defendants in this case?

A. I have, sir; it happened that I met Mr. Weckerle when I came from the Grand Jury. A certain gentleman at the corner of Race street came to Weckerle and said, "Weckerle, you are a Dutchman;" we went in, and I said to Weckerle, "try to settle this affair, for I really dreaded it; if I could do any thing at midnight I would do it;" he seemed to be in a great passion, but I said to him, "If you will hear me, I will hear you;" he was making a great noise. At Vine street, he caught me by the elbow, there were some gentlemen by, he related a great story; "here gentlemen, here's a man always says, make it up, make it up, but he holds a stick over one's head, breaks their head or gives a black eye, and then says, make it up." I asked him if he was done, Mr. Weckerle you acknowledge you have a black eye, I see none, if you have one and are afraid of having it knocked out, I beg you to have done; he seemed in a great passion. The first time I met him after that, I was summoned as a juror, when the affair happened between the ———, I stepped into the court-house and asked a number of men what was done in that business; it was

said they had adjourned 'till three o'clock. Mr. Weckerle called me, said he, Mr. Uhler, what has become of the flying lions; he said, you damn'd scoundrel I firmly believe, you must be one. I stated it to some of the congregation, I do not recollect to whom. I came to the steps, did not know Weckerle followed me. I met Mr. Lex, I stood there a second. Weckerle was among the crowd, he said, you damn'd rascal, how come on the flying lions. I had mentioned before a peace officer, that the Germans had come over the benches like flying lions.

Q. Was he in the habit of abusing you?

A. Yes sir. I went to step into the mayor and make my complaint, but Mr. Long advised me not to do it.

Adjourned till 9 o'clock.—FRIDAY, 12th JULY, 1816, 9 A. M.

SAMPSON LEVY, Esq. *on the part of the defendants*—having stated the facts as they would appear in evidence, and opened the case on behalf of his clients, the following witnesses were respectively examined.

FREDERICK DREER, *sworn*—Some time in September, we had a society, called the Mosheim Society, and we had a speaker appointed to make a speech, and we wanted to meet together in the school room. I was a member of the corporation; I was to ask the corporation to give us the liberty of the school room; they gave us the liberty on such a day to use the room in Cherry street, any day we chose, it was not mentioned what particular day. On a particular day we were to meet together; it was on Monday in September 1815. About two evenings before we met to see if every thing was prepared for the oration which was to be delivered. One of our members had a ticket, on which it was mentioned, on the same evening when we had liberty to use the school house, they were to meet there, and they were invited on the ticket; the same evening, and at the same place, there was to be a meeting for English preaching. I did not know any thing of it, it was the first I heard or knew of this case. The society considered awhile about it, and did not know what we should do, as we had every thing prepared. Our president Mr. Fisher in Arch street, chose, that we should not hold this meeting on that evening, and to prevent disturbance it was postponed to another day—they did not meet on that night, there was no meeting at all, neither of the one nor the other. Some days after they met, Thursday or Monday, the English society met in the school room, in Cherry street, and we met on the same evening in Fourth street school house, and beginning with singing and praying, and we quit, saying, we should meet again in a short time, and some of our members went over to the other school house, I went myself for a little while to see how they come on, on the English side. They had some articles read by Mr. Keemle in English; all that they did was in English. I did not stay long there; they were beginning in such a way, that I saw it would create a disturbance in our congregation; they were asked if they were in favor—some said yes, some said no, after the articles were read. Afterwards, I heard Dr. Leib say, they put the

cart before the horse, they went on a wrong way—it was said the same time they read the articles; he said it would make a disturbance with the congregation—they ought to go on in another way. I did not stay very long there; I went away from the school house—I did not stay till they broke up—there was nothing out of order that I saw. The articles were drawn in such a way as to give us what they please, and hurt a great many's feelings. I went home:—Some days afterwards the corporation met—I was a member of this corporation—we began business in the evening—there are two doors—it was not very cold, it was a pleasant evening, and the outside door was shut, and the second door a little distance open. I heard a knocking on the outside door; I went out and opened it; there was Mr. Uhler and Mr. Busch—they asked me if Mr. Lehr was in; I said yes. I went back into the vestry room and told Mr. Lehr, some body wished to see him. Mr. Lehr went out. I did not see any body in the yard but these two men. Mr. Lehr brought half a dozen papers in from these men. This paper was wrote in the English language; I believe it was a kind of petition sent from the English side to the corporation: they did nothing in that business that evening—the petition was in English and that was the reason it was not read that evening. In a short time the election came on—some weeks or a week before, the last time the corporation came together to make a rule for the election day, when I came in the corporation that time. I was in a minute or two, Mr. Witman asked the president, if he would take the question when he made a motion. (*Dr. Collin was sworn to interpret the remainder of the witness's testimony, as he proceeded with difficulty.*) The president said, yes, if it was in the proper manner, agreeable to the subject. Mr. Witman moved, that they should choose the inspectors. There were two inspectors proposed, Mr. Geyer and Mr. Krebs, and the president did not agree to it, and other members got up and said, it was contrary to our rules and bye-laws—it was against their regulations. He proposed to repeal that bye-law, and proceeded to voting, and there was a majority to preserve the bye-law, and a small number against it. It was voted that the whole election should go on as formerly, and the bye-law be preserved; that the president should have the same authority that he formerly had.

Q. Was there any minute made of this in writing?

A. It was all taken down in writing. This business was over for that evening; they went on no further in that case.

Dr. Collin read the minutes of the 28th December 1815, to which the witness referred, in the German language, and then translated them as follows:

“First—The proceedings of the former meeting were read.”

“Second—The elder of the elders, Conrad Haas, handed in his resignation, which was accepted.”

“Third—The question was put, whether that resolve in the bye-law, page 84, by which the president of the corporation is authorised to appoint the inspectors of the general election, should be re-

pealed; which question was answered with, no; that it should not be repealed."

"Fourth—Resolved, that a general election shall be held on the 6th January, 1816, from 9 o'clock in the forenoon, till 8 in the evening, in our school house in Cherry Alley."

"Fifth—Resolved, that the members of the corporation do meet again on 5th January, 1816, when the treasurer shall settle his accounts as is usual."

"Sixth—Resolved, that on next Sunday, it shall be published in our churches that the general election is to be held on the 5th January, 1816, when five elders and three church wardens are to be elected."

The witness proceeded.—On the 6th January 1816, in the morning, between 8 and 9 o'clock, we met in Cherry street in the school house. The time came on for beginning the settling of the accounts of the corporation. Dr. Helmuth read the church rules, and after Dr. Helmuth prayed, and the treasurer began to read off his accounts for the congregation. Mr. Long was just beginning; Dr. Helmuth stopped him for a few minutes, and advised that they might be all peaceable and quiet, it was his wish. Mr. Long settled afterwards his accounts. The moment he was done, Mr. Witman jumped on a chair and hallooed out "that he had taken the advice of the government, (*as he expressed himself in the German*) that he had a right to appoint the inspectors of the election." (*The Revd. Dr. Schæffer was sworn to act as interpreter during the remainder of the witness's testimony*) and those who were for it should say yes, and those against it, no—there were a great many more against it than for it: I heard a great many saying, no, more than yes. Mr. Witman said, "he himself had a right to choose the inspectors." At the same time our inspectors were in the room; one was within the inclosure and one without it, Mr. Lehr and Mr Hoeckley. The president informed these gentlemen, that they had been appointed inspectors, before that. The president mentioned the names of the inspectors publicly in the school house, on the morning of the election, the inspectors and secretaries, and, then a disturbance took place—some of the members present intended to put Mr. Wagner into the enclosure. Ripperger, Mr. Andrew Busch and Mr. Steiff; there were many more whom I could not see well. Several of our side wanted to hold him back; Mr. Reisch and Mr. Chur, they did not injure him; it lasted but a moment, I did not see that his clothes were torn. I saw him frequently through the day. Mr. Reisch put his arm on the top of that enclosure, and with his other arm held Mr. Wagner, and Mr. Long with his fist struck on that hand which was on the top of the enclosure. There were Long, Loyer, Birnbaum; and Mr. John Geyer stepped backwards and called upon the constable, Vanderslice. I did not hear, what he said to the constable. Vanderslice went to him and he took hold of some of the people there present; he stood on a step about eight inches from the ground.

Q. Who did the constable take hold of?

A. I could not see exactly, but it seems he would help Wagner over the enclosure. There arose a great crowd and pressure near him; there was a stove near the steps, and as the pressure was so great, some of them tumbled down from the steps and fell against the stove, and the stove fell down and tumbled into pieces. Mr. Wagner afterwards came into the enclosure.

Q. Did you hear Mr. Wagner exclaim, "you will choak me?"

A. No. The election had been opened in the meantime and some votes given in.

Q. Who were in the railing taking votes?

A. Hoeckley, Lehr, Miller, Schwikkard, Cruse, Long, Witman, Wagner, John Geyer, Birnbaum and George Honey.

Q. Who received the votes?

A. Hoeckley and Lehr.

Q. When the president mentioned that these gentlemen were to be the inspectors, were any persons in the school house at the time?

A. The school house was full; and many were in another apartment near the school house.

Q. Could they all hear what the president said?

A. Yes, he spoke as loud as he possibly could. Afterwards all was quiet; the people generally went up and gave their votes without interruption, on both sides. Witman stood near the post where the votes were handed in, with a paper in his hand and set down the names of the voters on both sides; he put down some and some not, and therefore we did not know what use he was going to make of it; he examined the voters, the inspectors had no room to examine the voters, at least, he acted in a manner that they could not perform their duty towards the voters so fully as they wished. I saw and heard Mr. Lehr desire him to set a little back on the table; I was present afterwards; I went away a little, and went in afterwards. Witman stood there at that post, it was about noon; after awhile he looked about and talked with some one, and afterwards he sat himself down near the table.

Q. Was the stand which Witman took near the post, inconvenient for the inspectors? Did it interfere with the election?

A. The place was very narrow where votes were handed in—he stood close to Mr. Lehr, so as to make it inconvenient for him; Mr. Lehr requested him to stand a little to one side, he would have more room to take down the votes.

Q. What did Witman say to that?

A. I did not hear, that Witman said any thing after he sat down; he remained there.

Q. Was he not frequently asked to sit down?

A. I heard the inspectors several times desire Witman to sit down.

Q. Did he sit down?

A. Some time in the afternoon when I came in, I found that he had sat down on the table; he had the same paper in his hands, he wrote something.

Q. You told us, you came in before prayers were read in the morning, and you went out and came in again in the afternoon and Witman had sat down at the table; was it in the morning the inspectors asked him to sit down?

A. It was in the morning after the election was opened.—I was not long absent from the school house during the whole day; during my stay there in the afternoon all was quiet.

Q. Did any thing happen at noon?

A. I happened to come to the school house, Mr. Weckerle came to me and said that one of our fellow-brethren was beaten very severely on his head, near his eye, which made the blood flow; afterwards I saw the one who was beaten, one Mr. Speiss; this had just happened during my absence from the school room; the blood was flowing down from him. I was not present the whole of the afternoon; I saw nothing disorderly 'till evening; he staid where the votes were taken for a good while, and the constables were always present there, and a tumult arose outside the door and they went out into the street. I cannot say what occasioned the tumult, I went out myself to look at them; as I went out into Fourth street, as I went along, some person went before me, knocked behind a stick and touched me under the arm; I took hold of it, it struck me between my body and my arm—it was a sword cane—the man was young John Cope. I kept one part and the man took the other—he turned against me. I did not know whether he wanted the part which was in my hand, I handed it back—the piece which the man had was the sword; he had turned around towards me.

Q. Did the man present the point of the sword to you?

A. Not directly towards my breast. I did not know him at first, but afterwards I saw that it was John Cope, and then I gave him the scabbard. He did not say any thing to me nor I to him. At the same evening Mr. Mannhardt gave in his vote—when he entered the school house there was some person; William Berg came with him; he said "Mannhardt comes," at the same time every thing was quiet in the school house; Andrew Busch stood on a bench on the same side, and called out when Mannhardt was coming, "there comes the captain of the Germans," and repeated it often, and after Mannhardt had given in his vote, and as he turned himself round afterwards, Busch called again, "this is the German's Lord God." I heard nobody else use such expressions.

Q. Are you positive you heard nobody else but Busch?

A. I heard nobody else. I stood close to the place where the votes were received.

Q. Was there such a noise or confusion that you could not have heard any other use the expression?

A. It was middling quiet at that time. In the school house in Fourth street, some of them during the day were there—some of the members wanted to warm themselves, that were cold; there

was some beer and bread there—there were two barrels of beer; when I was in the school house, all was quiet.

Q. Do you know any thing of the constable's breaking a pane of glass?

A. I heard the breaking; I was at the place where the votes were taken, I heard it said, that a constable had broken a pane of glass. After this happened, some of them went out of doors into the street and had some words among themselves, but I staid in the school house.

Q. Did you see a greater number of sticks upon that occasion, than would generally appear at an election?

A. I saw nothing of that kind, all was quiet and peaceable except what sticks I saw in the hands of the constables.

Q. Were you ever present at a conversation which took place between Mr. Cope and Mr. Weckerle at the court house.

A. I went out with Weckerle, who said that the papers were lost, or that the rats had eaten them. Cope went out with us. I did not hear any thing else, that had been said by Weckerle. I left them when I heard him say, the rats had eaten them.

Q. When you left Weckerle, did you leave Cope with him?

A. I left them together; afterwards Weckerle said something to Mr. Uhler "how the flying lions were coming on." Mr. Uhler said, "you called me a damn'd rascal." Mr. Weckerle replied, "no, I have not said so, if he would be such a one he might be so, he had not called him so." Uhler went away and said, he would sue him; Weckerle replied, "he might do so."

Q. When Weckerle met Uhler and said, how do the flying lions come on, and when Weckerle said, no, I did not say so, what did Uhler reply?

A. Uhler replied "he had said so."

Q. Do you know any thing of a man being seized by a constable and carried down Fourth street?

A. It was at the same time when they had somebody between them, but I did not see the man; they turned and went into the school house again; at the same time Mr. Cope had the stick.

Q. Can you say, whether you saw any body drunk that evening?

A. I saw nobody drunk, he himself was dry, but did not take a drink; when he was there nobody could get drunk—nothing was left. There was no sort of liquor in the school house, except beer.

YEATES, JUDGE. Did any of the other side get any of the beer and bread?

A. I saw Mr. Busch taking a mug or a pint of beer in the school house where the election was.

Q. Did Busch take a drink?

A. I cannot say—I did not see whether he did or not. Busch coming into the school house, met me going out. I saw afterwards some beer on the table where the inspectors were. Busch took some beer over to the inspectors; I saw he was going over to the enclosure with the mug of beer in his hand.

Q. Did you see any scuffle or tumult, other than that which was occasioned by Wagner's attempt to get within the enclosure?

A. No other than that, and that in the evening which I before mentioned.—*Adjourned.*

SATURDAY, 13th JULY, 9 A. M.

FREDERICK DREER, *in continuation.*—Q. What do you know of the meeting in Plumb street, South wark?

A. I went down that evening; it was mentioned before, that we would meet that evening, some of them as many as could come: there were several people in the lower room. I went to the lower room, staid there a little while, and after a while Mr. Rehn came there to the school, he came afterwards to the lower room—I did not see him at first—he said that the door was shut up stairs. We spoke there a little bit together and I went up and told Mr. Rehn, I was going up, he might go up with me. He followed me up to the room, the room door was open and the candle was lighted. I did not see it shut that evening, and some persons were in the room; there were more than one—Mr. Rehn was up with me, talked awhile with me about some kind of business which was planned, that they wanted to meet together the same evening in the same room, the English side. I talked with Mr. Rehn down stairs a little while, and I said, if they had something to do, they might do it, if it was something other people should know, if it was nothing secret. Mr. Rehn said, he invited the members on the English side, they wanted to meet that evening and they could do no business now; he said he expected some members on that side; there were some there; by his talking the time passed away, so that we were hindered in our business too; we could do nothing that evening. This was a *fippenny-bit* society we wanted to form; there was one in the city, but it was too far off, and we wanted one in Southwark.

Q. What hindered the business from being done?

A. By the coming up and going down, and some of them staying there all the time. There was nothing done afterwards, we made an end by singing a hymn, and broke up, we postponed it until another evening.

Q. Were the doors shut or fastened by any body during the whole time?

A. I saw nobody shut them. I was down in the school room a little while, and when I went up, the doors were open; Mr. Rehn was with me; he was one of the last before he went away.

Q. How many of the English party were there?

A. I cannot tell exactly, perhaps four or five—some of them were strangers to me.

Q. Did they make any noise to disturb you?

A. No, there was not any particular noise; but it was so we could not do any thing that evening.

Q. How many were in the room up stairs, when you came in with Rehn?

A. I suppose three or four—there were some of them on the En-

English side—I saw one of them, I heard afterwards, was of the English side.

Q. How long were you down stairs before you went up?

A. It might be about a quarter of an hour, I cannot tell exactly.

Q. When you were down stairs, did you hear any say, they were going away because the doors were shut, and they could not do any business?

A. I heard them say they were shut, but when I went up, they were open. I heard nobody else but Mr. Rehn say they were shut; there was not any body went away that I know of; when I went up stairs we all went up together.

Q. Was there any committee appointed to preserve order on the day of the election by the corporation or congregation, and who composed that committee?

A. The congregation appointed a committee some time before the election, to see if every thing be in good order and peaceable, that no disturbance may take place.

Q. Did the congregation appoint that committee?

A. The German party—Speiss was one, Wm. Berg was one, I know a great many more, but I cannot recollect their names. I cannot tell exactly how many; more perhaps than twenty.

Q. Was this committee appointed to get votes?

A. No sir, to preserve order.

Q. *Juror.* Is it usual to appoint a committee of that kind?

A. Yes sir.

Q. Has it been done before?

A. Yes sir.

Q. Has it been done frequently?

A. Yes sir, often.

Q. Was it at a meeting this committee was appointed?

A. The congregation met together in the school house.

Q. *Juror.* Was it generally known among the congregation, that this meeting was to take place for this appointment of the committee?

A. Yes sir.

Q. Did you constantly attend the meetings of this party, and was there order generally preserved?

A. Yes sir, I was at almost all the meetings, order was preserved, opened with prayer and singing at the beginning and breaking up; there was nothing to disturb.

Cross examined.

Q. Do you know Adam G. Harris?

A. Yes sir.

Q. Had you any conversation with him, the night that paper was presented to the vestry?

A. I do not know, if it was the same evening.

Q. Do you remember any conversation about the circumstance that took place at the school house? Do you remember saying, that they might thank God that they got out with their lives?

A. I do not remember any thing of the kind, I said to any body.

Q. Do you remember Dr. Helmuth interfering between you and Mr. Harris?

A. I had nothing to do with Mr. Harris—he told me a very queer kind of a word; I did not know the meaning of it; he said, I ought not to have a right in the corporation, or some such word.

Q. Do you remember Mr. Harris saying to you, “he must have been a powerful man who would have prevented them from getting out of the school room with their lives?”

A. No—I cannot recollect any thing I said.

Q. Then you *do* remember the conversation took place?

A. That I *spoke* with the man, but I do not know what. He spoke a word with Mr. Helmuth likewise, and some others heard it. I asked some of them, what reason he had to say so.

Q. Was there any thing said at a meeting of the vestry, about the disturbance that had taken place at the school house?

A. There was something said in the corporation in general.

YEATES, JUDGE. Do you say then, that when Harris was by, you *did not* express yourself in those words, or any thing of the kind?

A. I do not know the particular words used, there was something spoken, that they would meet together without the congregation knowing it; and it was no wonder there would be a disturbance among the congregation.

YEATES, JUDGE. Did you express any satisfaction, or pleasure, or surprise, that any body had escaped from the school house unhurt?

A. No.

Q. How long have you been in this country Mr. Dreer?

A. Ten years.

Q. How long have you been a communicant in the German Lutheran congregation?

A. I took the sacrament, the first six months or the first year, in that church. When I came, I joined directly this congregation.

Q. Are you a citizen of the United States?

A. Yes sir.

Q. What took place at the meeting you held in Fourth street?

A. We held some meetings, we had a special place.

Q. Was there a paper drawn up on that evening and signed by a number of persons?

A. I did not see that there was any paper drawn up that evening.

Q. Look at that paper and say if you ever saw it before?
(*showing him the conspiracy paper.*)

A. I saw that paper in the corporation.

Q. Before you saw it in the corporation, did you see it signed by any of the members?

A. I saw it signed, but not on that evening.

Q. What do you know of that paper? Who drew it off? Relate all you know concerning it.

A. At one of the meetings, they wanted to make a petition to send over to the corporation. The petition was wrote. I do not know who wrote it. I do not know that hand writing.

Q. Who did you see first sign it? Did you see any members sign it?

A. Yes sir.

Q. Where was it you saw them sign it?

A. In the school house in Fourth street.

Q. How long before it was sent to the vestry?

A. It was three or four days before the corporation met.

Q. Did they make a beginning before you saw it?

A. I did not see it until there was a good number of names to it.

Q. Did you hear it read before you saw it signed?

A. Yes sir.

Q. Who read it?

A. I cannot tell exactly who it was.

Q. Was it Christian L. Mannhardt?

A. I do not know who it was. I am certain, I heard some person read it before it was signed.

Q. Did they all agree to it?

A. They took the question and they agreed to it?

Q. Did you agree to it?

A. I had nothing to do with it—I was one of the corporation. I had nothing to say in this case.

Q. But did you agree to it?

A. Yes; I thought it was right.

Q. Have you not stated before, by whom it was read there?

A. To my knowledge, I do not know whether I said any thing at all about it.

Q. Did you vote for it?

A. I heard *all* was for it, but whether I said no, or yes, I do not know. I thought it was right not to interfere, as I was one of the corporation.

Q. I want you to recollect whether the last meeting was not the one, from which you went over to the school house in Cherry street?

A. I do not know whether it was the same evening. We heard, when we came over about the school plan, there was a meeting over in Cherry street; we went over there, after we were done.

Q. Did you *get to* the school plan that evening?

A. No; not that evening. I can't say how far it was done, the business was done as far as we could do it; it was late and after we went over to Cherry street.

Q. How late was it?

A. I cannot tell exactly; it was before ten. The room was full, when I left it—some went away with me; at most all of the meetings some come and some go—some may have gone before, but I don't know who.

Q. Do you know Christian G. Smith?

A. Yes sir.

Q. Did he go over to the school house?

A. I do not know.

Q. Was every thing quiet at these meetings where Christian G. Smith attended?

A. Yes sir; at our meetings there was never any disturbance as I saw.

Q. You spoke of two barrels of beer you saw emptied; who paid for that beer?

A. The Lutheran congregation, to which I belong.

Q. What part of it?

A. The German part.

Q. Who bespoke it?

A. I do not know if it was this committee bought it; it might have been them, who bought it.

Q. Were you one of the committee?

A. No; I was one of the corporation.

Q. Did you ever see the bill for it?

A. No.

Q. Do you know how much that beer and the sausages cost?

A. I do not know.

Q. Was there ever a meeting of the *fippenny-bit* society, before that which you mentioned?

A. Yes sir, before that time in Plumb street up stairs.

Q. What did you mean then by saying you were going to form a society called the *fippenny-bit* society?

A. They met before that to see if we could get a plan to agree to it, to see if we could get such a society in the lower part of the town; there was one in the city, but too far for the members to come to it.

Q. When was that society formed?

A. I do not know exactly the month; it was in last fall or winter.

Q. What was the object of that society?

A. Some of the people were poor, it was to send their children to school, the same as it is in the city. When any body was in a poor way we should assist them a little.

Q. Is one of your objects to get voters or pew holders for that church? Do you assist those poor persons to pews?

A. I do not know whether there was money paid for that purpose.

Q. How often has that society met since that time?

A. We have met frequently; we meet every month; we have a praying every month of our ministers.

Q. You stated that this petition was presented when Busch and Uhler came to the door and knocked; what time was it?

A. It was in the evening after dark.

Q. Have you been attending Court during the time the evidence has been given in?

A. Yes sir ;—not all the time, there was one whole day I was not here but a few minutes.

Q. Who told you what took place that day ?

A. Nobody told me any thing.

Q. Have you talked with any body about this trial lately ; and about the evidence you were to give in ?

A. No, not at all.

Q. You have never had any thing to say about being a witness in this case ?

A. I did not talk with any body in particular.

Q. Did you talk with Mannhardt ?

A. No—not about witnesses.

Q. Did you talk with him about what you know of this business ?

A. No—nothing particular.

Q. What do you mean by “not talking any thing particular ?”

A. I may have told people, that all I saw I could be an evidence to.

Q. Did you tell your story to any person ?

A. No, not to any body in particular. I did not tell any particular one ; I said, I saw all this that happened.

Q. How much did it cost the German part of the congregation to provide the beer and money for this election ?

A. I do not know ; I did not see the bill. I did not give any thing to it.

Q. How came it that you did not give any thing to it ?

A. I did not ask and nobody asked me.

Q. Juror. Were the corporation when they met, in the habit of taking down the names of those who were present, in the church books when they proceeded to business ?

Rev. Dr. Schaeffer. It has not been usual for many years.

Juror. I would like to know from the witness, who were present, from his recollection, at the meeting before the election, when the president of the corporation appointed the inspectors ?

A. I can't tell. He mentioned the names to me, I know, before the election. The president did not appoint them in the corporation, but in the congregation.

Juror. Who were the persons in the room, when the president mentioned the names of the inspectors publicly ?

A. All the corporation and congregation.

Rev. Doct. Schaeffer, called—As far as I can recollect, we met in the vestry room, near Zion Church on the day of election, about 9 o'clock in the morning. The officers of the corporation, with our then treasurer Mr. Long, went over to the school house in Cherry street. A short time after we had taken our seats in that enclosure, my colleague the Rev. Dr. Helmuth read that paragraph of the church constitution, publicly, respecting our election, before the members of the corporation and congregation who were present. Our treasurer began to read his accounts, and when he had finished, Mr. Witman stepped on a chair, began to speak, and I for my part, took my records and went out of the school house as

fast as I could. I heard him say something, but I could not declare upon oath what he said.

YEATES, JUDGE. Do you know any thing, Dr. Schaeffer, of the president mentioning that he had appointed inspectors?

A. Not to my knowledge, I went out immediately.

YEATES, JUDGE. What was the reason of your hurrying out of the school house?

A. I saw they could not keep quiet from their appearance; and I did not choose to stay there. At former elections, it was the custom of myself and colleague, to leave the room when the election was opened.

Q. What is the manner of opening the election? Is it considered, opened, when the treasurer's accounts are read?

A. We have a rule in our church constitution, that when the treasurer reads his accounts, the election is opened.

Q. What passed at the previous meeting?

A. It is always usual before the election, that the corporation meets and the treasurer settles his accounts; sometimes the minister meets, but it is not usual; there is no other business done.

Q. What passed on that day?

A. I cannot recollect; here are the records, which contain every thing that passed.

Q. Do you recollect whether you were at the meeting of the 28th December, 1815?

A. I was at that meeting, was secretary and made these minutes.

Q. Those which were read yesterday to us?

A. Yes sir. (*Doct. Schaeffer translated the minutes which were read yesterday.*)

Q. When you went from the vestry room into the school room, or at any time before you left the school room, did you know whether the president had appointed?

A. No sir.

Q. Did you hear it, or were you publicly informed?

The question was objected to by the counsel, for the prosecution. After a discussion of the point;

YEATES, JUDGE. If it was a fact generally known, a matter of notoriety, it might be given in evidence; but any thing told merely to Doct. Schaeffer, could not be admitted. If it can be ascertained from memory, that a number of persons told him, it may be heard; but his being told by detached persons will not be evidence.

The question was further argued by Joseph Ingersoll, Esq. and Moses Levy, Esq. at some length; and the following decision was delivered by

YEATES, JUDGE. The rules of evidence are founded on good sense, adapted to the ideas of mankind. It is certainly true, that there is not a more sound maxim, than that, if there is near evidence to be had, the contrary shall not be admitted. It is said, this may ratify the narration of another person; it may in a certain degree. But if a person mentions that another had told him a certain thing, and

we know the witness would not say what would be untrue, yet this is not evidence. So in the present instance, what a particular person told Dr. Schaeffer, is certainly not evidence; but the person himself must be brought forward to relate what came to his knowledge. It is therefore my opinion that Doct. Schaeffer cannot answer that question; but if as I said before it was public, or he had it from public information, then it may be admitted.

Q. Dr. Schaeffer, do you know that paper? Was it brought into the corporation last year?

A. It was before the corporation, in our vestry room in Zion church. (*Doct. Schaeffer referred to the minute book to see what time it was presented.*)

Q. Was it before the other petition had been brought forward—the English address?

A. It was delivered the 26th September, 1816, and at the same time another piece of writing in the English language, subscribed by Dr. Leib was also handed in.

Q. Was there notice taken of that on the minutes?

A. Yes sir.—(*Doct. Schaeffer read the minutes relative to these circumstances.*)

“Paragraph 2d. A piece of paper was read, subscribed by 125 members of the congregation, in which the disturbances which might probably arise in our congregation, by introducing worship in the English language, are lamented, and they pray the corporation to use their best endeavors, that the worship in the German language in both of our churches may be kept up.—Resolved, that this writing lay over for further consideration and decision at the next meeting of our corporation.”

“Paragraph 3d.—A writing in the English language was read, subscribed by Michael Leib, chairman of the committee, giving an account that the said was chosen or elected by a number of members of our congregation, to confer with the corporation, about the introducing of the worship in the English language.—Resolved, that this piece of writing shall lay over for consideration and decision at the next meeting of the corporation.”

Q. Were you Secretary of the corporation at the time this German petition was handed in?

A. Yes sir.

Q. Did you read it?

A. Yes sir, by order of the president, I did read it before the corporation.

Q. Do you recollect whether in the German petition these words were *underscored* at the time of reading it?

A. To the best of my recollection, I cannot say whether they were or not—I was much affected—I saw before hand how much disturbance would arise to agitate the congregation.

Q. Had you the care of this paper?

The substance of Doct. Schaeffer's reply was, that this paper had been deposited by himself in his house with other vestry papers, until he could hand them to the new secretary, and that in his absence

from home, being on a visit to a sick person, Mr. Woelper, president, in company with Mr. Witman, a member of the corporation, as also Mr. Henschman had called at his house and finding Mrs. Schaeffer at home, asked of her the loan of this paper, which he obtained from the cause of his being president of the corporation, and by overcoming Mrs. Schaeffer's reluctance to touch the vestry papers in Dr. Schaeffer's absence.

Q. Do you know if Mr. Henschman, Mr. Witman and Mr. Woelper are related to each other?

A. I know they are related, but not in what degree.

Q. Are they related by blood or marriage?

A. I believe Mr. Henschman's consort is related to Mr. Woelper by blood, and likewise is Mr. Witman.

Cross examined.

Q. Is Woelper still president of that corporation?

A. To the best of my knowledge he has resigned.

Q. Do you know how he came to resign?

A. I do not know. I suppose it is recorded in this book when he sent in his resignation. I cannot give any account of the time, because I was not secretary.

Q. Can you turn to it?

A. I find it here recorded, "on the 11th January, 1816, a letter from G. Woelper was read, as his resignation, and resolved thereupon not to receive it; but a committee was appointed to wait upon him, and to ask the reason why he sent in his resignation; the committee, were Hoeckley, Fricke and Fisher. Here I find, "on Saturday, 3d February 1816, the corporation met again. Mr. Hoeckley reported, that Mr. Woelper, as the present president of the corporation, believed he was not able to resume his office; hereupon it was resolved, that the resignation of Mr. Woelper should lie over for further consideration." "Saturday, 10th February, 1816, the corporation met." Paragraph 2nd, "The motion was made, that the resignation of Mr. Woelper should further lie over."

They chose a president *pro tempore*. At another session, on Friday the 15th March, 1816, a motion was made and seconded, that the resignation of Woelper should further lie over. At a session, Tuesday, 23d April 1816, Paragraph 2nd, "A motion was made and seconded, that the resignation of Mr. Woelper should still lie over." 16th May, 1816, I find paragraph 2nd, Mr. Frederick Hoeckley was elected president *pro tempore*, and at the same session, before the meeting broke up, paragraph 5th, "Frederick Hoeckley was elected president of the corporation by a majority of votes."

Q. Dr. Schaeffer, at the meeting of 28th December, 1815, when the question was taken upon Mr. Witman's motion, about the choice of the inspectors, was it not merely carried by the casting vote of the president?

A. I cannot remember.

Q. Turn to the minutes of the 6th October, 1815.

A. There is none of the 6th; there is one of the 11th.

Q. Look if there was not a memorial presented?

A. "On the 11th October, 1815, a paper was delivered from a meeting which was held on the 6th October, 1815 in our school house, of the Northern Liberties, at a very numerous meeting of the German Lutherans of Zion's congregation, in and near Philadelphia, as likewise from a very numerous meeting of the congregation held on the 9th of this instant, October, in our school house in North Fourth street, this writing was read: Resolved, that this piece of writing be taken into consideration; and the first question on the same piece of writing, the corporation answered, that enquiry has been made with the corporation about English preaching."

J. R. Ingersoll, read the paper.

A. "At a meeting held on the 6th October, 1815" (*by a preceding resolve, it was determined it should be entered on the minutes*) "in our school house in the Northern Liberties, of members of the German Lutherans of Zion congregation, in and near Philadelphia; as well as at another very numerous meeting of the members of our church, which was held the 9th of this month, at our school house in Fourth street, the following preamble and resolves were considered. Mr. Frederick Hoeckley, chairman, and C. T. Cruse, secretary of the meeting in the Northern Liberties, and Mr. Frederick Eberle, chairman, and F. A. Snyder, secretary of the meeting in the city. "As we have enjoyed the inexpressible happiness according to the mercies of God, to be provided with churches and schools of our own, in which the word of God, and the needful religious instruction for our, and our children's welfare, in our respected and highly cultivated mother tongue is laid down, and as we observed with a lively feeling of dissatisfaction that steps are taken by introducing the English language, to destroy the object of our religious institutions, and in a wanton manner to take our property out of our hands, therefore, 1st:—We wish to know from the corporation, whether really, dissensions have begun, on account of having German and English preaching, and whether the same has been taken up by the corporation."

"Paragraph 2nd. We declare ourselves to be Germans, and to be for the Germans. If there are some members in the corporation, who declare themselves for the English and against the Germans, we declare them as having broken their covenant and duty, and acknowledge them for the future, no more as lawful and official members of the corporation."

4th. "If such members are in the corporation who are for the English and against the Germans, we hold and declare from this day, the corporation not having the lawful number, and that they cannot do and undertake any thing."

5th. "About the legacies, the congregation has hitherto been kept in the dark, the congregation wishes therefore to become acquainted publicly with every thing, because they believe that every legacy was given by a German testator, and for the German, and for this sole object."

6th. "Some years ago, it was fully decided by the congregation and corporation, that in our churches, no English should be, or can and dare be preached, can and dare the present corporation act otherwise than the former has acted?"

7th. "Is, according to the laws of our country, the charter and our church constitution not sufficient to secure the German property? Then the congregation is ready to examine every thing, and to have it corrected."

8th. "We desire that this piece of writing be entered into our records." Subscribed by 261 members of the congregation, and the officers of both meetings."

Q. Have you not, Dr. Schaeffer, repeatedly expressed your opinion in favor of introducing the English, in some manner for instructing the children?

The defendant's counsel objected to the question being answered, and Mr. Ingersoll thought it admissible—a short debate ensued—The court admitted the evidence.

A. I do not recollect precisely, but may, (in conversation with those who complained that their children did not understand the language) have made no objection to their being catechised in the English language. I have uniformly exhorted them to send their children to the German school.

Q. How many boys or young men were confirmed at the last general confirmation of the German Lutheran church?

A. Perhaps there were fourteen or eighteen, I cannot tell exactly, it is in our books in which their names are put down.

Q. Have there not been at former confirmations, from eighty to an hundred confirmed?

The question was objected to by the defendant's counsel, and overruled by the court.

Dr. Schaeffer was requested to read the minutes of what the corporation did on the subject of the petition.

"Resolved, that the aforesaid piece of writing be entered into the record according to the desire of the subscribers."

6th. "Resolved, that a committee be appointed to consider the preceding writing, and to form an answer to the members of the congregation, and to lay it before the corporation at their next session. The first question in the said writing, the corporation answered, that an enquiry was made with the corporation about the English preaching. "Messrs. Yæger, Carr, Lehr, Tragher and Shauber were the committee." The committee made no report while I was secretary; they were asked once or twice, but were not ready.

GEORGE HONEY, sworn.—Q. Were you president of the German Lutheran congregation in 1815?

A. Yes.

Q. Who did you appoint inspectors, and in what manner?

A. I appointed Mr. Frederick Hoeckley three days before the election; Henry Lehr, one day before the election, and the clerks

or secretaries, Messrs. Miller, Schwikkard and Cruse, three or four days before.

Q. Where did you make the appointment;

A. I called on them, and informed them.

Q. Did you attend on the morning of the day of the election, as president of that corporation?

A. Yes sir.

Q. What took place?

A. Previous to the election, I was informed we should have a constable or two at the election. I cannot tell the name of the person who told me, but I heard, it came from Mr. Cope. I looked upon it as a matter of indifference and did not care any thing more about it. Some of the members of the corporation came out of the vestry or steeple where they met, and came into the school house. I believe there were two ministers along, the treasurer, Mr. Long, and some members of the corporation. When they came into the school house, they got over into an enclosure that was petitioned off, where they proceeded to read off the accounts of the congregation.

Q. Is this the old accustomed manner?

A. It has been the old accustomed manner for many years. When the accounts were read off, no sooner than they were done, Mr. Witman jumped on a chair and began to harangue the people. In the mean time I called to Mr. Hoeckley and Mr. Lehr to take their seats as inspectors.

Q. Publicly?

A. Yes, loud, and the clerks too, to step in and open the election and receive votes. I called them out by their names. I had all their names wrote down on a piece of paper to read them off. I knew them all by heart. What became of that paper I cannot say, whether I laid it on the table or not, I do not recollect. All this time, Mr. Witman was on the chair haranguing the people. All this happened unexpectedly; because of Witman's getting on the chair, he got the upper hand of me. I called out the names—he called to the people assembled in the school house, that he had it from the highest authority, the attorney-general, that they had a right to nominate or choose the inspectors. While he was doing this, I told the inspectors and clerks to come and take their seats, and go on with the election, he speaking at the same time. By his doing so, the people assembled, got into a kind of uproar, a stir; he wanted to take the question, a good number called out yes, but a large majority, no—From the manner, all the election, the votes were taken—it appeared there were more than two to one.

Q. Do you remember the whole number of votes?

A. Five hundred and forty odd for the German; two hundred and thirty odd for the English. All this happened in an instant; as soon as Witman called out to them to put the question, a number cried out, "out with him, out with him," and wanted to put

him out of the enclosure, as he took an unfair question, not regular. It caused a tumult immediately.

Q. What caused the tumult?

A. Mr. Witman standing on the chair, and addressing the people. Mr. Witman stood in the enclosure, took out a paper and wrote, and continued writing all day, till they were done voting. He was repeatedly requested by the inspectors to come out of that spot, to sit down on a chair or some where else, they were incommoded by him. They got him out of that spot, and he came round and sat at a table. He came out in consequence of their representation. They were not incommoded after that.

Q. Did he continue writing at the table?

A. Yes, but after that had happened, he had nominated Mr. Geyer and Mr. Wagner as inspectors, but the people would not suffer it, and wanted him out of that place. They would not allow Mr. Wagner to come into the enclosure; a number of them took hold of him, to keep him out. When they were trying to get Wagner over the railing, there was Long, Geyer, and Birnbaum on the inside; some one took hold of Wagner to lift him in, but could not succeed; he got him on the railing, but could not get him in. All this time the election was going on. After a length of time, I saw Wagner standing alongside the railing outside, watching his opportunity, he got his foot on one of the rails, and over he jumped. In the mean time, it might have been a little while before, somebody inside the railing made a motion, to go to Mr. Ripberger's, and hold an election there. I do not know whether it was Mr. Geyer and Mr. Long, but to the best of my recollection it was. In the end it was given up. I cannot say much more about the election, the election was carrying on—I went out.

Q. How long did that scuffle last about Wagner?

A. Not long, a minute or two. In the mean time the crowd got with their backs against the stove and upset it; it was a cannon stove. The election went on, and a number of persons came to vote who had no right to vote, to my own knowledge, and some were taken, I know ought not have been taken.

Q. Which side?

A. I suppose it to be the side which was against us; they complained of taking bad votes on both sides. The votes, I took notice of were all against us; a number of them came from Meyer's church, so called, and some from St. Pauls', one Mr. File who has gone and left us for many years. Some were taken and some were not.

Q. When you saw this irregular proceeding, did you not take steps to stop it?

A. When the inspectors are appointed, it is their duty to see that they take good votes. I asked some of them whom I met in the street, John File in particular, how he came to vote, he said, "they wanted me to vote."

Q. Were you as active and alert in seeing who voted improperly for you as well as against you.

A. Not at all. I took notice of Witman's writing so much, and I

did not know what he wrote. All went on quietly till it was over. When they came to count the votes, Witman said, "the votes ran all to one side like the handle of a jug. In the course of voting, Mr. Eringhaus and several others came in and gave in their votes, and I do not know that I ever saw Mr. Eringhaus in the church, and I attend frequently. I cannot recollect the names of the others.

Q. Did you continue there until the whole of the election was closed afterwards?

A. Yes.

Q. Did they separate quietly?

A. Yes; only when they had found how it was, a good many of the English party had quit the school house.

Q. How long have you been a member of that corporation?

A. Some have said they have been in twenty years, I believe I was as long as they. I have been a member of the congregation about sixty years.

Q. How often have you been president during that time?

A. Only once, and that much against my will, for two years. With a great deal of persuasion I took it. Since that I declined, and did not take it again.

Q. What has been the form and usage, since you have been in that corporation, of appointing inspectors and clerks for the election?

A. We thought it so small a matter, we did not care much about it; we generally adjourned over to the school house, and when the treasurer read his accounts, the president appointed whom he thought proper.

Q. Did you appoint the inspectors of 1814?

A. I do not recollect; it was not done so particular, we appointed them when we were in the school house.

Q. Do you recollect that at any time, the congregation ever appointed the inspectors at any election at which you were present?

A. No sir, it might have been done, they might have chosen one from their body and one from the corporation, but I do not recollect, it has sometimes been done. Before I quit the corporation, Witman, one evening in the corporation proposed Geyer and Krebs. They disliked the appointment very much, and upon taking the question it fell through.

Q. Do you know by what majority?

A. No, I did not attend to it—when it failed, he then made a motion to repeal that bye-law, and the question was taken on it and lost too.

Q. On the evening the German petition was presented, what took place as to disorder or disturbance?

A. There was no disturbance or disorder to my knowledge.

Q. Who brought it in?

A. I can't tell exactly; I am at a loss in that respect, I believe Mr. Dreer might have brought it in.

Q. Do you know Andrew Busch?

A. Yes.

Q. Do you know any thing of his conduct on the evening of the election?

A. No; I did not take notice.

Q. Do you recollect, when Mannhardt came in to vote?

A. No sir, I was absent.

Q. Did you ever attend these German meetings previous to the election?

A. Yes.

Q. Were the meetings ever disorderly, or were they orderly?

A. It was always opened with prayer, and then went on as quietly as meetings generally are, without any uproar.

Q. Were you ever at the meetings in Plumb street?

A. Yes.

Q. Were you at the meeting there a short time before the election, in the fall of 1815, when they did not go on with their business, because of interruption?

A. No, I was not at that meeting.

Q. Were you at the meeting in the Northern Liberties?

A. Yes. When the meeting was going on pretty quietly, Busch came in and took a seat. A few words ensued, Busch made some remarks, that were not decent, they thought. It caused some disturbance and uproar.

Q. Can you state the words, or the substance of them?

A. I do not recollect the words.

Q. What was his object?

A. Bringing an uneasiness or inquietude on the meeting.

Q. What point had he in view?

A. He was alone, and could not have carried a point if he had intended. I cannot say what he had in view.

Cross examined.

Q. You stated, Mr. File belongs to St. Paul's church; does he take his children with him?

A. Not knowing, can't say.

Q. Do you carry with you your children to meeting?

A. I have none. My nephews, I tell them to go to church.

Q. Where do your nephews go?

A. I do not know.

Q. Were you in church, when the sailors came from the vessel to vote?

A. No.

Q. Do you recollect, whether, on the question put by Witman, with regard to the repeal of the bye-law, you did not give the casting vote?

A. I gave a vote on it.

Q. We do not want to know that; did you not give the casting vote?

A. After the vote was taken, they said, I ought to give the casting vote, I did so.

Q. Was there a majority of only one ?

A. Yes.

Q. Did you not give two votes in that case ?

A. I don't know.

Q. Did you not give two votes on that occasion ?

A. I do not know, if I had voted they would have been equal, and I gave the casting vote. Those who were for it, stood up and the other side sat down ; I stood up ; they mentioned to me, that if I had not got up, as I had no right to do, they would have been equal. This was not mentioned for some time afterwards.

Q. Can you recollect how many were present of the members of the corporation ?

A. No. We never do business, without there is a quorum of sixteen, sometimes there are seventeen.

Q. Do you not know, now, there was a tie of votes ?

A. I did not at the time, but it must have been so. No man told me, I voted, when I ought not. It must have been equal.

Q. Do you know whether the number was equal at that time ?

A. I cannot say ; we never do business without sixteen.

Q. Do you know whether anybody's back was against the stove ?

A. I saw people's backs against the stove, I do not know which, I saw a good many against it.

Q. How near were you to the stove ?

A. Within four or five feet.

Q. Was there a good number of people between you and the stove ?

A. A good many.

Q. Were you sitting down ?

A. I cannot tell.

HENRY LINK, sworn.—A member of the German Lutheran congregation about thirty-six years. Have been a member of the corporation six years this year.

Q. Were you present when Mr. Witman made a motion with regard to repealing the bye-law ?

A. When he nominated Mr. Krebs and Mr. Geyer, some of us asked him if he was president. The question was taken, who was for this bye-law should be repealed, should say, yes, and those against it, no. They could not decide by yes and no ; they made them sit down, and those who were for it should signify by rising. The question was put to rising, and when we counted, there was nine, and afterwards they sat down, and those who were against it, rose, there was nine also, and Mr. Honey voted. It stood as it was, the resolution, it was laid on the book.

Q. Were the ministers present ?

A. Yes, I believe they were. Dr. Schaeffer, I am certain, was there.

Q. Did he vote ?

A. No sir ; we adjourned. It was left to the president to chuse these assessors, he did not say, when, where or how.

Q. Who do you mean by these assessors ?

A. To take the votes of the election.

Q. Did you attend the election ?

A. Yes sir.

Q. Were you there at the opening ?

A. No sir, when I came about eleven o'clock, it was all quiet ; I staid there about a quarter of an hour, and went away ; the stove was tossed over.

Q. Did you see any man abused by the constable ?

A. No, I did not see any thing of that kind. I heard of it, but did not see it.

Q. Were you at any meeting in the Northern Liberties, held by the German congregation ?

A. No sir, I attended none of their meetings at all.

Q. Have you attended the general election of that congregation for the last twenty years, regularly ?

A. No, I did not care any thing about the election.

Q. Have you attended for the last three years ?

A. Yes.

Q. Did you ever know of the inspectors being appointed by the congregation ?

A. No sir. I never went to an election before that time.

Q. Do you belong to the society, called the *fippenny-bit* society ?

A. No sir, I did belong to it once, about eight or nine years ago, but I quit.

Q. Were you at the meeting in Plumb street ?

A. No sir.

Adjourned.

MONDAY, 15th JULY, 1816, 10 o'clock A. M.

REVD. DR. SCHAEFFER.—Q. Is George Witman related to George Krebs ? Did he not marry the daughter of Krebs ?

A. Yes sir.

Q. Is not William Wagner related to George Krebs ?

A. Yes sir, Mr. Wagner's sister was married to Mr. George Krebs.

Q. Can you say whether Peter Lex's son was not married to Charles Eberle's daughter ?

A. As far as I know, I believe Jacob Lex, Peter Lex's son is married to Charles Eberle's daughter.

Q. Do you know the Revd. Mr. Baker of Germantown ?

A. Yes sir.

Q. Is he a preacher ?

A. Yes sir ; he is a preacher of our congregation.

Q. Does he preach in English ?

A. I heard him preach in English, at a funeral, near Frankfort meeting house. I never heard him in church, that I recollect.

Q. Is he not a step-son of George Krebs ?

A. He is a son of his wife,

Q. Do you know whether the Revd. Mr. Baker is not married to Charles Eberle's daughter?

A. Yes.

Q. Do you know whether Jacob Mechlin's sister is not married to William Wagner?

A. Yes sir, she is.

Q. Can you say, whether George Woelper is related to Witman?

A. He is a relation, but I do not know how near. I never inquired.

Q. Is not George Woelper an uncle to Henschman's wife?

A. Yes sir, I believe he is.

Q. Can you tell me, if Caspar Rehn is not married to Mr. Lex's daughter?

A. Yes, he is.

Q. What has been the conversation between you and Witman, since the election upon this subject?

A. I cannot exactly recollect.

Q. Has he not been frequently at your house since?

A. Not frequently, to my knowledge. If my memory does not fail me, he was there once from the election 'till last Whitsunday, he was not there oftener to my recollection.

Q. What was the subject of conversation?

A. Perhaps they were upon family affairs, I do not recollect, whether they had any tendency to these disputes. I avoided any such conversation relative to this dispute, and I did not wish it. He was a member of our congregation.

Q. Has he been at your house within a day or two, or within a week?

A. Not to my recollection; may be, he was there last week, I do not exactly remember what day; but I doubt whether we had much conversation about these matters; Witman is a relation of my son, a minister at Frederick town. Mr. Witman's wife, and my son's wife are sisters. It was quite a natural thing, for him to step in to see his brother-in-law; I could not tell him not to come in. I can safely say, I never advised with either the one or other party.

Cross examined.

Q. Will you have the goodness to let me know who are Mannhardt's relations in this congregation?

A. I do not know. I believe he is a single man, he has no relations, I know of.

Q. Do you know, that he is related to all, or any of the congregation?

A. I never made any inquiry; I do not know of any to whom he is related.

Q. Are you acquainted with Mr. Weckerle's family?

A. Not in the least.

Q. Are you acquainted with Fricke's family conn

A. Yes, I am acquainted with his brother-in-law, a respectable man, Fricke married his sister.

Q. You stated you had a son, who is a preacher at Fredericktown, have you another son, a preacher?

A. Yes sir, I have one at New-York.

Q. Do you know whether either of them preach English?

A. Yes sir, the one in New-York preaches in both languages.

Q. Did either of your sons preach lately in Philadelphia?

A. Yes sir, he preached at St. John's, at the particular request of Mr. Meyers; he belongs to that synod.

Q. Will you state whether your son preached in German in any of the churches in Philadelphia?

A. He did not preach in our churches during his stay here.

YEATES, JUDGE. Do you know the Lutheran minister at Lancaster?

A. Yes sir.

Q. Do you know whether he preaches in English?

A. I cannot state, for certain, whether he does or not.

Q. Can you state why your son did not preach in Zion or St. Michael's churches; was he not prevented, because he spoke in English in the morning?

A. It was my advice to him not to preach in our churches, as he had preached in the other.

Q. Were you not called upon by Mr. Dreer and some other members of the congregation, and informed that he could not be permitted to preach, because of his having preached in the other church?

A. Those gentlemen called on me; I do not know that they stated, he *should* not, but from the conversation, it appeared it would not be agreeable, because he had preached in St. John's church. It was determined, before they called, that he would not preach there.

Q. Have you ever heard your son preach in New-York?

A. Yes sir, I heard him last fall.

Q. In German?

A. No sir, I preached in the forenoon in German, and he in the afternoon, in English.

Q. Have you ever heard him preach German?

A. Yes sir.

Q. Did you hear him when he preached here?

A. No sir, I did not, nor any of my family.

JOHN GOODMAN, Esq.—Did you make a translation of this byelaw?

A. I did. Mr. Fricke and Mr. Hoeckley called upon me last Saturday, and wished me to examine this translation with the German, having shewn me the German copy and the printed copy in English, and to correct such errors as might appear. I did so; and in comparing the printed English translation with the German copy, the following amendments appeared to be proper. (*Mr. Goodman then exhibited several passages, in which the terms had*

not been literally translated, but the sense preserved ; he, however, considered it his duty to notice them, and give the literal exposition of the words. These alterations were so very immaterial, that the reporter did not think it necessary to introduce them.)

Extract from the bye-law, Sect. 3d.—“The president appoints two inspectors and several clerks, so that the clerks may relieve each other, he may appoint the inspectors and clerks, either out of the congregation or corporation. The inspectors have to take care that no others give their votes than such as are members of the church, and take the sacrament, &c.”

Q. What is the original word, which you have translated, appoints?

A. I cannot use any other word that will not be appoint ; if the word were as in the original, it would mean election ; appoint, is a good translation ; I cannot think of any other word, I do not say there is no other, I think that which I have used, is proper.

J. R. INGERSOLL.—The word is translated, to regulate, to take care of, to provide.—

Witness.—The word nominate, may answer also, I see very little difference between that and appoint.

Paragraph —. “If on any ticket, besides the names, any other thing is written, or when two or more tickets are found together, then, such tickets cannot be read off, and are accounted for nothing.”

Q. What is the word written?

A. It is not absolutely, written, but the word “stand” is there ; if any thing, stand, on the ticket.”

Q. You said the literal translation is one thing, and the meaning another.

A. No sir, I do not say so. I say, I take it for granted that the tickets were written, and as it referred to what was written on the tickets, I used the word to give the idea ; but the word is, “stand.”

SAMPSON LEVY, Esq. read to the jury, the extract from the bye-law, Sect. 3, as translated above by Mr. Goodman, and the counter representation of 1805, in opposition to the introduction of the English language, signed by George G. Woelper, Peter Lex, John G. Wagner, George Krebs, John Long, J. C. Helmuth, John T. Schmidt, Godfrey Cope, John C. Chur, George Hauser, Christian Dannaker, Godfrey Schmidt, and Frederick Fricke. (*Vide appendix.*)

CHRISTIAN L. BRANDT, sworn.—Q. Are you a member of the German Lutheran congregation?

A. Yes sir.

Q. How long have you been a member?

A. Upwards of twenty years, since the year 1795.

Q. Do you know any thing of the meeting in September last?

A. The latter end of September, it was on Sunday morning, when I went to church, I went in and took my wife in, and went round to the other side of the church. I heard several members

say, "they wanted English preaching in our churches again;" I said, "I don't believe it." I made more enquiry, and found there was to be a meeting on the Monday following. I went on Monday to the school house in Cherry street; I saw several I knew, especially young Mr. Jacob Lex. When I came in, Mr. Rehn was chairman, there was another young gentleman, whom I did not know until lately, I know since was lawyer Keemle, who was secretary. The secretary had a paper in his hand, and he read the resolutions; when they were done, the first resolution was, they wanted English preaching in the German congregation. As I believe it was in the first resolution, to make such resolutions to petition the congregation to get English. When they was read off, Dr. Leib steps up and says, "you are put the cart before the horse." Then Mr. secretary says, "no, I have got the cart into the horse," and make the whole laugh. Mr. Leib says, "there is no law in the United States, and Pennsylvania, which can take the Germans from their rights, you must go on more softly; when you go on that way, you make a disturbance in the congregation, you are declaring war against them; you know the consequence about seven or eight years ago. They took the vote, who was for, should say aye, and not, no; there were a good many ayes and good many noes. They then was formed into a society for the purpose to make rules and agreements to have English preaching in our congregation; Mr. Leib stepped up again and made answer again; "for what is that society, it is to make at once a declaration of war, and he says, you know there is a society for the purpose of divine worship in the German language. So they were opposed in all the resolutions, and some was for, and some was against it, and at last they appointed a committee of seven to wait on the corporation, which I believe I know mostly all their names, but do not recollect them all; there was Busch, John Long, Peter Lex; I do not recollect the rest; afterwards some other people came in, it was pretty late, I retreated to the back part of the school house and went out the back way. When I came to the front door, one hallooed out, "hurra for Dr. Leib," and some said not, I said nothing; there was some talking, and told me there was a petition in the other school house. I was a little for the English too if it could be done in a peaceable way; we had a trial before, and I know what trouble it is. I went over to the other school house and signed a paper, I never heard it read, and do not know what it was; 'twas pretty late.

Q. Were they disturbed in that school house, by improper conduct?

A. I do not know, I did not hear any disturbance, only some was for it and some against it; there were some members there to hear what was forwards, and I know they were on the German side.

Q. Did you continue the whole time?

A. Yes sir.

Q. Did any disturbance take place in the adjoining room?

A. No sir.

Q. Have you attended any of the German meetings previous to the election in January?

A. I attended some.

Q. Did you attend any in the Northern Liberties?

A. No sir.

Q. In Plumb street?

A. No sir.

Q. What meeting did you attend?

A. I mostly attended the meetings of the congregation; I missed a good many of them.

Q. Were these meetings conducted with decency and order?

A. They were always orderly and decent; they began first by a song from the hymn book and prayer, and when the business was done, they finished likewise in the same way.

Q. Was there any person who exhorted them to keep good order?

A. Yes, there was Mannhardt, he troubled himself and gave them good advice to behave themselves in a christian manner, and peaceable.

Q. Who read the prayers, generally?

A. Sometimes Mr. Mannhardt, other times, Mr. Yæger; I do not recollect always, some person who was fit for it.

Q. Did you attend the election?

A. Yes sir.

Q. Have you attended the election before that?

A. Yes sir.

Q. Do you know if there ever was a vote taken in the congregation, who the inspectors should be?

A. No; the rules were always read before, and the president, after that, appoints the inspectors, and the last words Dr. Helmuth says, "the president appoints the inspectors and clerks."

Q. Did he name them?

A. Dr. Helmuth did not, the president calls them in; they are always there; nobody troubles themselves about it.

Q. Were you at the commencement of the election the last time?

A. No sir, I was there in the afternoon when the conduct of the people was decent and orderly.

Q. Did you continue there any time?

A. A good half hour. I saw nothing at all, only Mr. Busch said something, I was just going out; he says, "weil Andrew, how goes it," and I asked him if that was Dutch or English beer; he had it in his left hand, and I was on the right; I saw him carry it within the enclosure, where the inspectors were.

Q. Do you recollect seeing any of the congregation abused by Vanderslice?

A. I saw the man afterwards, he had a black eye.

Cross examined.

Q. What time of day was that?

A. I was there betwixt four and five o'clock, to give my vote.

Q. At the elections you have attended, have you generally been present when the poles were opened and the inspectors appointed?

A. It is impossible to tell, I have been a member for twenty years, sometimes I was there at the opening, and sometimes not; I wished to hear the church affairs and to hear the accounts.

Q. When was the earliest you knew the president to appoint?

A. About eight or nine years ago. I do not trouble myself much about the elections; for many years at first I did not vote at all.

Q. Were you ever in the vestry?

A. No sir; nor do I wish to be in it.

Q. How many meetings of the German party did you attend last fall?

A. May be three or four.

Q. At the time you signed the paper, who handed it to you for signature?

A. It was lying on the table.

Q. Have you subscribed any money for supporting the objects of that paper?

A. No sir; I never heard of any thing subscribed.

Q. Was Mannhardt present when you signed this paper?

A. No sir.

Q. You stated that you were rather inclined for the English preaching, until you heard there would be some disturbance; how came you to sign that paper?

A. Because I heard that the paper was to put a stop to the disturbance; I heard it was to prevent it.

HENRY LUEDERIZ, *sworn*.—I have been a member of the congregation about ten years.

Q. Have you ever attended any of the meetings?

A. Yes sir.

Q. Relate when you attended, and where.

A. I can't tell exactly the time, the evening I attended at the Cherry street meeting. I attended by mistake. When I came there, I found Dr. Leib and a young man, I heard his name was Keimle. Dr. Leib told him, he went to work in a wrong way; every member of the congregation ought to be invited to the meeting; he thought it would not be to the satisfaction of the congregation; it was putting the cart before the horse, and would not meet with their approbation. There was likewise a committee, whose duty it was to collect as many members as they could of young men, to join the St. Michael's society. I do not recollect the names of the committee. There was some man, Mr. Burkhardt, observed, they should not take but Germans, or descendants of Germans; but, as he expressed himself in German, they did not appear to listen to it, or take much notice of it. A motion was made by Daniel Sharp, and the question was taken that they should not confine themselves to any, they should take Irish or French, or any other nation who wished to become members of that society,

As soon as I heard that, I went out; I did not like the proceedings, and I went off.

Q. Did you say the vote was taken?

A. Yes sir, it was moved, and seconded, and carried.

Q. Were the resolutions adopted, and a committee appointed, before you went away?

A. Yes sir. I heard an address; nothing struck me, but that if the Germans would not give their consent, they should repent it in sackcloth and ashes.

Q. Was that address read by the secretary?

A. Yes sir. The motion was made, that it should be printed. I recollected I had seen it, but it did not contain the remarks I heard there.

Q. During the time you were there, were they intruded upon by the German party, and their proceedings impeded?

A. No sir, I heard no disturbance.

Q. Was Busch there?

A. Yes sir, he shook hands with me, and said, he was happy to see me there.

Q. Was Long there?

A. Yes sir.

Q. Did you attend the general election in January?

A. Yes sir. I went after two o'clock.

Q. What was the conduct of the people that day?

A. I did not see any thing strange, other, than at any other election.

Q. Was there any constable there?

A. I do not recollect, there were any. I did not stay long, I went away.

Q. Were you there, ever, at the opening of the election?

A. No sir, never.

Q. Did you ever attend any of the meetings in Southwark?

A. Yes sir.

Q. In the fall, previous to the election?

A. Yes sir.

Q. When you were there, what was the conduct of the Germans?

A. It could not be better than it was, they began with singing hymns, and prayer.

Q. Were you at the meeting, when Rehn came there?

A. No sir, I was not there.

Q. Is it a society that meets there?

A. Yes sir; I believe they formed themselves into a society. I believe it was for those who were too far off them in the city. I belong to that in the city.

Q. Is it a *fippenny-bit* society?

A. Yes sir.

Q. How long has it existed?

A. Longer than I can tell.

Q. I understand you, that you heard at that meeting in the

school house, an address read, the conversation between Dr. Leib and Mr. Keemle, and the motion made, to appoint the committee to receive any members of any nation whatever, and there was no dispute at all?

A. No sir, no dispute at all.

Q. When did you go away?

A. Immediately after the motion was carried.

Cross examined.

Q. How long have you been a communicant?

A. About ten years.

Q. How long have you had a seat?

A. I had no seat when I took the sacrament; perhaps I had one about five or six years, or thereabouts.

Q. Have you a family?

A. Yes sir.

Q. You state, the address was read that evening?

A. I was at two meetings, I do not know whether it was read that evening, or before. I make a mistake sometimes. I state what I have heard and seen, but I cannot exactly recollect the time.

Q. You are sure, you read it at that meeting, or the meeting before?

A. I am sure I heard it read, but I was at two meetings, and it must have been at one.

Q. You were never there, after you heard that motion made?

A. No sir.

Q. Did you ever hear that address read by any body else?

A. It might be, but I do not recollect.

Q. Did you never hear it read at a German meeting?

A. Not that I recollect.

Q. Did you ever hear it read by Mr. Mannhardt?

A. I do not recollect.

Q. How comes it, that you recollect what was read at the one meeting, and not at the other?

A. Because it struck me so much, it was against me, and it will never escape from my memory.—I saw a copy of it.

Q. Who gave it to you?

A. I cannot tell.

Q. Was there not a committee appointed for the purpose of writing that address, that night you spoke of?

A. It was prepared.

Q. Did you sign that paper?

A. I cannot tell. I signed a paper in the school house, south of the church; but I do not know if this is the paper. I suppose I can find my name here if I signed it.

Q. How do you spell your name?

A. Luedritz.

Q. Who presented you the paper you signed?

A. There was a paper lying on the table, and I was told it was an application to the corporation, and I signed it.

Q. Who told you?

A. I cannot tell. (*the witness found his signature to the paper.*)

Q. Did you read it before you signed it?

A. No sir.

Q. Did you hear it read?

A. No sir, I did not.

JOHN ADAM KEPPLE, sworn—I have been a member of the congregation twenty or thirty years. I was born and brought up in Albany, in Jersey. I served my time in Albany. I was twenty in Braddock's defeat. I was seventy-five since St. Patrick's day.

Q. Have you attended any of the meetings of the English party?

A. I did not come to meet with them. I met in the English school house the Dutch party; they began singing and praying, and had some conversation about these disturbances, and concluded with singing and praying; we came out peaceable and quiet.

Q. Was it last fall?

A. Yes sir, before the election, the first meeting. It was repeated, there was some of them over in Cherry street in the school house; so there was a party of us went over, and a part went home. I went over along with baker Schmidt, there was a few more along with us—It was about eight o'clock. When we came in, we bid them good evening, and there was Dr. Leib among them; Mr. Busch was there; I did not know them all; but them I knew, I took notice of. Mr. Schmidt is quick in his talking; he made a little bubbling out in Dutch; then Mr. Busch made out in answer, "hush, hush;" "aye," says he, "you call out, hush, hush, but here the enemy is going to take our rights away, and if we hold our tongues, we will lose our rights, but my mouth is open yet, and it will not be shut until you draw a rope round my neck, and then I cannot speak any longer." Dr. Leib said, (there was a little dispute among their own party), "gentlemen, do not go on so, for you put the cart before the horse, they might go on with a little gentler talking" which Mr. Leib replied, "if you go on so, you will bring war on the congregation." On which I adjourned from there, I took Schmidt home with me and went together; we live a little distance off; we left them disputing among themselves.

Q. Was there any resolution read while you were there?

A. No sir.

Q. Who was chairman?

A. I do not recollect.

Q. Was there any disturbance by the German party, to prevent them from proceeding in their business?

A. Not a single thing.

Q. Did any body go up to the chairman and give abuse?

A. No, there was no other disturbance than Schmidt's talking in that way; we were not a quarter of an hour there.

Q. Have you ever attended any meeting of the German society in Southwark?

A. None but one; it was after the election.

Q. Were you at any, previous to the election?

A. Every second Monday, our *fippenny-bit* society meet, and I generally, if I am well, meet with the rest.

Q. Were you, on the day of the election, present, before they proceeded to business?

A. Yes sir, I was there about nine o'clock, before the church reckonings were read off. When I came there, the church reckonings were not quite done. I laid my arm on the railing—I saw the books on the table; Dr. Helmuth, Long, Witman, Geyer and others in the inside, and when they were all done, Dr. Helmuth said, “Mr. Long, take care of the books and writings,” and said he, “Mr. Honey you put in the inspectors according to the rules of the church.”

Q. Who did Mr. Honey call in?

A. Before that, I leaned with my arm on the railing, I saw a small piece of paper on the books with some writing on, and I saw Witman look at it, and when Dr. Helmuth came up to Mr. Honey to put the inspectors in, Mr. Honey immediately caught hold of that paper, to put his inspectors in, and upon that, Witman jumped on the chair, and repeated, he had the power from the attorney general to put the inspectors in; he called out for Wagner and Geyer:—Geyer happened to be inside, and Wagner outside; but Wagner made an attempt to go up to the railing to go over; when Witman called out, “there were yea and nay called out”—When Wagner tried to get over, some of them about, of both parties, took hold of him, some pulling him back, some trying to get him in, some inside, and some outside; Woelper had his shoulder under him; Witman tried to get him over; one Reisch had hold of his left arm, Long was inside and struck him three or four times on the arm, (that he had to let his hold go,) with his fist, ’till he numbed his arm. Wagner was on the railing about two minutes; in pulling him back, there stood a large common stove, larger than I am, and with the crowd pushing against the stove they upset it. In the time that bubble was, Mr. Honey had placed his men; then the election went on, and I was standing there looking on; there was some disputes on both sides.

Q. Did Wagner get in?

A. He got in afterwards; the tickets were coming in on both sides.

Q. How long did you continue there?

A. ’Till the pole was closed, only a little time I went to take my dinner, and I was back directly again. In the course of the day, I was standing there on the platform, most part of the day, I forget what time of day, Mannhardt and another man were coming in to give their votes, Busch was sitting on the bench on the other side, while Mannhardt and the other man were coming in, Busch cried out, “open the door wide, the Dutch captain general is coming;” he repeated it two or three times. Mr. Mannhardt never said a word to him, and went up and gave his vote, and they

turned and were coming out again—as they were coming out, he cried, “there goes the *Dutch, their God and their Saviour.*”

Q. Did you observe Mannhardt during the course of the day come with a number of men in a train, drunk, to give their votes?

A. No sir; they were going backwards and forwards the whole day, but I saw only Mannhardt and this man come together to put in their votes.

Q. Did there follow Mannhardt, any number of men, who appeared to be ready to obey his orders, and to vote pursuant to them?

A. No sir, there was nobody but this man, who came like a companion; it was almost noon.

Q. Did Mannhardt come again in the evening?

A. I did not see him again after that.

Q. Do you recollect seeing any constables there?

A. Yes, there were constables there back and forward, but I did not know them.

Q. Did you see one of them strike one of the people?

A. No sir, I did not see him, but I heard it was; there was another who had a scratched cheek, and they said, Witman had struck him.

Q. Who was in the enclosure that evening when the votes were counted off?

A. I believe Birnbaum was there, Long, Geyer, and those Honey had appointed.

Q. Were you present when the question was taken on Witman's motion?

A. Yes, some cried out yes, and some, no.

Q. How long did that competition continue about getting Wagner over the railing?

A. About two minutes, if it was so much. There was no more riot.

Cross examined.

Q. When Busch spoke thus, when Mannhardt came in, in what language did he speak?

A. In English.

Q. Do you know what was written on that paper, Witman took off the book?

A. No sir.

TOBIAS BEALER, sworn—A member of the German congregation since 1807; have not been a member of the corporation. In October last, I was out after my business, and on my return my wife told me, there was a notice. I read it, it was an invitation to a meeting of the German congregation. I did not know what was the meaning of it. Monday I went to the school house in Cherry street. I saw a man on the outside; I asked him what was the matter in our congregation; he said, they wanted to introduce English preaching. I understood there were to be two meetings; I went over to the German meeting in Fourth street, and I heard the proceedings read. I went to the other meeting as I went home;

going along Cherry alley, I thought I would step in there, to know what was the meaning of it. When I went in, the English meeting was just organized; the chairman had taken his seat, doctors and lawyers were sitting round the table. I then thought to myself, I had better go, it was right for me to stay; I saw Mr. Busch, when I went over, there was Mr. Schleif and several others I knew. Mr. Keemle the secretary, read off the address, and after that the resolutions; I cannot remember all; some of them related, that there should be a meeting in the school house in the Northern Liberties, they should wish to have preaching there; they were all read. Dr. Leib got up, and said, "I have received an invitation to attend this meeting; I did not know what their object was, I take it to be the meaning, although the address and resolutions were not written correct, yet I take it to be the meaning to have English preaching," "but," says he, "before we proceed to this, I wish to make some remarks. We are now assembled here to ask a favor of an incorporated body, and I do not see, that this is a proper way of doing it; if we are going to ask this incorporated body a favor, it must be done in a milder manner. Here I have heard read from the secretary, resolutions, which are taking their rights out of their hands." Perhaps it was not the same words, but this was the meaning as near as I can recollect. Says he, "I will just make a remark concerning this; suppose a man comes to me to ask a favor, to give him this or that, and will say, you shall give me this or that; you are doing this, you are trying to control that congregation. It is true, my wife and family cannot understand German, and they cannot go with me to the German church; as for my own ears, the German can tickle them enough for me, to do good; but if this could be brought into effect without raising a noise, and going into the same disturbance there as seven or eight years ago, but not upon those conditions the secretary holds in his hands this moment. Gentlemen, I will tell you at once, proceeding in this manner, is declaring war at once;" and then he sat down. Up gets lawyer Keemle, spoke sometime in favor of the resolutions; he said, "respectable men had met and made that address, those members who had met had certainly considered the resolutions, and he thought it no more than right to adopt them." He spoke a considerable time, I do not recollect what, and sat down. Witman got up; he spoke a long time, and said, before he sat down, "I move these minutes be adopted." Dr. Leib then got up and said, "I hope gentlemen, they will not be adopted in this way as they stand, or I will be necessitated to withdraw." There were several more remarks, and said he, "if we go on in this way, it will be putting the cart before the horse;" he then moved a committee be appointed to investigate these resolutions and make them come out not so hard; he then sat down; Mr. Keemle got up and contended they should be adopted. He says, "this man objects to this proceeding, he says, we put the cart in the horse;—he meant, to put the cart before the horse; the members laughed at the mistake of the secretary; it was all the

disturbance. Dr. Leib passed the first resolution and after that I went away.

Q. Did you ever attend any other meetings previous to the election?

A. Yes sir, I have attended at the German meetings, previous to the election. The first one was held in the Northern Liberties, when the Germans met, we had our chairman and secretary, and it was opened with a psalm, and they prayed, and then proceeded to business. Mr. Busch I considered a friend of mine, I sat down near the table, when he came in he sat down near the table; says I, Mr. Busch, I am very glad to see you; other members sat down beside him. They were sitting there and the business went on. Mr. Mannhardt read a plan in order to amend our school; the principal reason of the English party always complained, that our schooling was not good, that the children could not be learned high enough as they wished. The plan was read, but not adopted. Mr. Mannhardt mentioned something that had happened at the English party, while Mr. Mannhardt was mentioning this, Mr. Busch sat down, and said to the man next him, "that's a lie;" immediately one of the members got up and said, "here Mr. Chairman, Mr. Busch has come here to see us, and while Mr. Mannhardt was reading that, he said to the man next him, all that Mr. Mannhardt has said, is a lie. Here Mr. Mannhardt called him up, and Busch contended for some time, "we never ask you for any thing," Mannhardt said, "I can prove what you asked for;" he then pulled out the invitation, and said, "here is enough to prove, you want English preaching." It was what Mr. Busch said, caused these interruptions; for we had several other meetings and all was quiet and there was no interruption.

Q. What did Busch say?

A. He said, to his knowledge, they never asked for any thing. Mannhardt said, "I can prove what you have asked," and pulled out this invitation. (*The second English notice, vide appendix.*)

Q. Did Busch deny what he had been accused of, by the member?

A. No sir, he did not deny it.

Q. Did he contend, Mannhardt had said, what was not true?

A. Not after the invitation was read; he did before. He said, he did not recollect their party had asked for any thing. Mannhardt said, "I can prove it by your invitation which you sent. There was no disturbance; there was a little hard talk. Some said, "Busch ought not to be here;" some said, "he visited us, he ought to behave cleverly, not whisper to those next to him; he ought to get up like a man, and speak to the chairman.

Q. Were you at the meeting in Southwark?

A. No sir, it was too far off. I did not attend the English party; it was a hard matter to get in the English meeting; they had an address which was signed by all that was for it, and afterwards none could get in but those who had signed it; they proceeded with locked doors.

Q. What other meeting did you attend?

A. I attended most of the meetings of the society in the city and Northern Liberties. I attended when I could, I was desirous of attending them: they were all conducted quiet.

Q. Did you attend the general election in January?

A. Yes sir, I had the honor of being appointed one of the committee of vigilance in 1816. I was there before nine o'clock.

Q. What was the duty of that committee?

A. As I was charged with my duty, this committee was always appointed that the election might be kept quiet, and as there were a good number of old Germans, who could not get along, we were to attend to these people that they might give their vote without interruption; the boys sometimes crowd round and impede the old people. In the morning about nine o'clock, I went into the school house, I found some members there of both parties; we staid there and were waiting for the committee of accounts; they met in the vestry room and came over always. As I was there, I saw Mr. Vanderslice come in; he told me, he was ordered to stay there. A little after nine, the committee came over, the clergymen with them. There was an enclosure made by the society on purpose for the inspectors and clerks to set in, that they might set in comfortable, and take in the votes. This enclosure was made by the society, which is about ten years old; that enclosure was made at the expence of that society. The committee of accounts came over and stept in. They proceeded to read off the accounts as usual; we stood by, when a heavy bill will come, we say, "that was a large bill," and nothing else. Afterwards, Dr. Helmuth made a speech in German; he mentioned in the first instance, this day was appointed for the election of church wardens—he then read the bye-law, when the election was to be held, and how they were to proceed previous to reading off the accounts, Mr. Witman sat in there, and Mr. Honey also—Honey had a piece of paper, on which were the names of the inspectors and clerks, he was to appoint. I saw the paper afterwards. While the accounts were read off, Mr. Honey asked for the sexton of the church, Mr. Gassner, Mr. Gassner was not in the house, Mr. Honey left his chair about four or five feet; while he did it, Mr. Witman got up, took the spectacles off the paper, turned it and read it and shook his head, and went away again. There was a man, stood next to me, and said, "what does he shake his head for," why, said I, this paper, the names of the inspectors were on, and perhaps he does not like them.

Q. How do you know, the names of the inspectors were on it?

A. I saw it when Mr. Honey went over—I saw likewise when he read off the inspectors. It happened previous to the finishing the reading the accounts. After the accounts were done reading off, Dr. Helmuth made these remarks, and Mr. Honey took up his paper and nominated his inspectors and clerks, and Mr. Witman in a violent manner jumped on a chair; his voice was not very strong, I heard him distinctly; says he, "no, no, gentlemen, the

advice of the attorney-general, the highest law officer in the state of Pennsylvania, is that the congregation has the right to chuse the inspectors, and I move that Mr. Wagner and Mr. Geyer be the inspectors; all those who are for it say, yes, and those against it, no." There was no distance between the questions as usual; he was too much in a hurry. There was a noise, some cried yes, and some no; some in Dutch, and some in English; there was such a confusion, I defy any body to tell which carried it. I then spoke to Mr. Hoeckley, if this is the way, you cannot hold an election. Mr. Hoeckley says, "never mind, our president has appointed inspectors agreeably to the bye-law, and we will go on taking the votes." After this was over, Mr. Wagner tried to get into the enclosure—I took notice, he lay with his back upon the top of the railing; Mr. Birnbaum had hold of his arm pulling him in; I did not know who he then was, I took hold of his leg, says I, who is this, some said, it is our inspector, I held up the leg to assist him not to go in, but not with any bad intention; some were pulling outside and some in. Afterwards I got his hat for him; why, said I, Mr. Wagner is it you, if he wants to get in, let him get in, I am here myself. Mr. Witman said, (and got up on the chair again,) "all those who are in favor of the English, will go to Mr. Ripberger;" "oh no," says Mr. Geyer, "that wont do, it is not legal"—Then Mr. Long says, "Mr. Witman, you may as well be quiet now, it has been done always so, and all we have to do, is to try to get votes in, we will gain the election yet"—They then had a little conversation and Mr. Witman submitted, and got a blank book. I saw Mr. Allmendinger, said I, Mr. Allmendinger, you are an older man than I am, come in here. The place where the inspectors were, is about four feet high, by it is a pillar, Witman pressed himself in there and sat examining people he had no right to, as an inspector. Mr. Leib told him frequently "Mr. Witman, I wish you would go and sit down, I am very inconvenient here, I have hardly any room;" but he would not pay any attention—He did not move, he staid there two hours or longer; There were some old members wished to vote, I went for them; when I came back, Witman was sitting by the table; how he got there I do not know.

Q. How long did that disturbance last, respecting Wagner?

A. It did not last five minutes—there was no further interruption, but what Witman made, he took down something in his book, what it was I know not—I continued on the ground the whole day.

Q. Were you there at the time Mannhardt came to vote?

A. Yes sir.

Q. Did a number of men follow him in to vote?

A. There were a good number coming in all day. When I went in myself, there were three or four came in after me. When in another part of the school house, I heard some one cry "Mr. Mannhardt is coming to vote." I then looked through the door, there is a door to that partition, I saw them. The passage was never clear.

Q. Were there more after him than after any other?

A. No sir they could not, it was hard enough for one man to get along, without a body of men.

Q. Did you hear the votes counted off?

A. Yes sir.

Q. Did you see many drunken, staggering men that day?

A. No sir, I did not, to my recollection; there might have been some, but I could not tell.

Q. Do you recollect being present at any conversation between Uhler and Weckerle last court?

A. I believe I was—I had some business down in this part of the town, I heard Mr. Helfenstein's case was to be decided this morning. I went in, court adjourned 'till afternoon. I stood on the step, Uhler stood on the second or last step; some old woman was there, she said to Weckerle, "what, Mr. Weckerle are you come to take our minister from us;" Weckerle said, "why woman you are wrong, I do not care about you or your minister." Uhler stept in between and said, "why Weckerle, you are not going to strike this woman," Mr. Weckerle said, "Mr. Uhler, you are crazy or a fool, or something of the kind." I stept down, said I, Mr. Uhler, Mr. Weckerle's not going to strike this woman, nor do you wish to make a disturbance by interfering, and we parted. At the mayor's court, he said, the Germans came in like flying lions in his evidence before the mayor's court on a prosecution for an assault and battery.—*Adjourned.*

TUESDAY, 16TH JULY, 9 O'CLOCK, A. M.

TOBIAS BEALER, *called.*—*Cross examined.*

Q. Will you state whether you saw any beer in the school house for the voters?

A. Yes sir, we had some beer. First, I wish to mention, I forgot to state, that at the last meeting which was held on Thursday before the election, we, in the evening in the school house, in Cherry street, and after we got through with our business, Mr. Mannhardt got up and said, "brethren and fellow members, you may now withdraw in the name of God, the election will take place next Monday at nine o'clock;" he wanted them to come quietly and peaceably, and vote for the German ticket, and they should put their confidence in their Lord, and if they did so they would certainly succeed. It was the usual mode at other meetings, it was conducted in a christian like manner with prayer and singing; he generally prayed and addressed the congregation, that they should not shew any spite, that they should pray to God and it should all take its right course.

Q. Who reminded you of this, Mr. Bealer?

A. Myself, sir.

Q. Have you talked about it with any one?

A. No sir, I thought of it when I went to bed.

Q. Who did you talk with about this case since you have been here yesterday; did you speak with Mannhardt?

A. Yes, but not about this case.

Q. What business does Mannhardt follow ?

A. I cannot tell ; I believe he has the management of the hotel in Sixth street.

Q. What is your business ?

A. I am a store keeper, keep a *grocery* store.

Q. How much beer was there ?

A. I believe we had two barrels of beer.

Q. Any wine ?

A. Yes sir, we had some wine, I sent for it myself—there was no spirits or liquor, of any kind, I sent for a gallon, I filled one bottle and took it to the inspectors and some gammon and bread, the wine was drank there, whether Witman drank I do not know, it was drank among them. When I came the beer was there, I do not know when it came there, I do not know who paid for it exactly ; I do not know whether it was paid for or not ; it was not bespoke by the society it was mentioned there ; in our committee of vigilance it was mentioned that we had better have it ; as in some other elections we thought that some would argue with one another at the tavern ; we got this that they might not go to dispute at the tavern : we had some sausages ; they were eat, I eat some myself. The committee of vigilance consisted of *forty* members. The German part of the congregation appointed that committee at a public meeting ; there was that many appointed, because some members made a remark, some would not attend, and they appointed the committee a little larger that there might enough attend.

Q. How do you know that the English party met with locked doors ?

A. I understand they did.

Q. You do not know it of your own knowledge ?

A. No sir, I do not.

Q. Did you ever hear Mr. Mannhardt make a speech on the subject of the address of the English party ; or did you ever hear him read it ?

A. No sir.

Q. Did you ever hear him make any remarks upon it ?

A. One evening the English party gave out some books, a member showed one to Mr. Mannhardt and he was desired to read it, he did read it.

Q. How come you to say he did not read it ?

A. I thought you alluded to the address.

Q. What remarks did he make upon it when he read it ?

A. I cannot recollect all the remarks he made upon it ; I could not state whether he made any or what ; it is so long ago, and not knowing we were to have so much trouble, I did not pay much attention to it.

Q. Would you know the address ?

A. Yes sir ; (*the address was 31st October, 1815, Mr. Ingersoll shewed him the address.*)

Q. Is that it ?

A. Yes sir. (*Agreed on 24th October.*)

Q. Is this one of the notices shewn to Mr. Busch? (*Exhibiting the first notice of friends of English preaching.*)

A. No sir, I received one of that kind at first; it was a notice that was more distinguished.

Q. Is this a copy of the one? (*Exhibiting the second notice.*)

A. Yes sir. (Mr. Ingersoll read them both; *vide appendix.*)

Q. What time did Mannhardt come to vote?

A. In the evening; it was candlelight. The evening that Busch said what I have mentioned, Mannhardt advised the members to be quiet and let the fellow member sit down, he was happy to see him there.

Q. Are you indicted for a riot at the election?

A. I cannot answer that question—I have been charged with an assault and battery against Mr. Wagner and bound over for it; what further it is about I cannot tell, whether it is a riot or not.

Q. Were you at the sign of the lion during that day?

A. No sir.

Q. Do you remember going to a tavern after being at the mayor's office?

A. Yes sir, we went to taverns, both going up and down.

Q. Who did you go with?

A. I could not recollect the names.

Q. Do you recollect any disturbance or riot that then took place at the corner of Fourth and Brewer's alley?

A. I do not know whether I was ever there in my life.

Q. Then sir, you were not ever in a tavern at the corner of Brewer's alley and Fourth street?

A. No sir.

Q. Or in Brewer's alley, near Fourth street?

A. If I am obliged to help you with the question, I can say, that there is a tavern in Brewer's alley but not at the corner, I have been there frequently, John Seemann keeps it.

Q. Was Seemann one of the German party?

A. He can scarcely speak the English, I believe he was.

Q. Was there any riot at his house?

A. Not on returning from the mayor's court.

Q. Can you say there was no riot?

A. I do not remember such a thing, except a little hard talking.

Q. Do you remember any man being beaten by another?

A. Yes sir, I remember that; I do not know that I would be able to tell how it come exactly, it was between the company that was there.

Q. Were you one of the combatants?

A. Yes sir, they were all engaged.

Q. How happened it?

A. I cannot tell you exactly, I do not remember it, if there had been notice of it at that time, I might have given correct testimony, but I do not recollect.

Q. Did you see any body drunk on the day of the election?

A. No sir, I do not recollect.

Q. Did you pay for the wine that was used at the election?

A. I paid for it.

Q. Have you been repaid?

A. No sir, I never mentioned a word about it; there was only two or three members knew I sent for it.

Q. Where was that wine kept?

A. In the room where the school master lived. The reason I sent for the wine was this, there was some old members coming to vote, I thought that when these old members came to vote, I would give them some wine and it would do them some good; it was for no bad intention.

Q. Where did you see Mannhardt?

A. I saw him in the school house; sometimes in the school house, sometimes he was reading in the apartment where the school master lives, we had a stove there, the stove in the school house, all could not get at and they went over to the other.

Q. Were you frequently in the school house during the day?

A. Yes sir, when I felt hungry I went in and perhaps took some beer; it was from my own intention I got that wine, I got it upon my own account without consulting the committee.

ADAM KEPPLER *was desirous of correcting a mistake he had made.*

When I had finished what I had to say, I went and set on a bench and considered the thing over, I recollected I made a mistake. I thought the time Mannhardt came in was after I had my dinner; but when I come to recollect, it was after I had my tea. Mannhardt came in some time after I had my tea and was standing on the platform. Busch said some expressions which I explained in English, but if it was in English, it was very broken English.

Q. Have you been talking with any body concerning your testimony?

A. No sir.

Q. Why did you not mention it yesterday?

A. I stated it to Mr. Long yesterday.

Q. With whom have you talked since you gave in your testimony yesterday?

A. I have not talked with any body in particular; any body that wanted to come in to speak with me, I told them do not tell me nothing, I knowed very well where I was.

Q. What did you mean by that?

A. That I did not want any body to give me some advice.

Q. Did you speak to every body so?

A. Yes sir.

Q. Did you speak to Mr. Pickle that way?

A. What Mr. Pickle?

Q. Any Mr. Pickle?

A. No sir, not about this here error.

Q. You did not mention a word of error?

A. I did not speak to any body but my old woman at home since I left the court house, with exception of Mr. Levy.

Q. How do you know they were going to talk with you?

A. They were talking about the case.

Q. Have you talked with any body about this trial except with your old woman and Mr. Levy?

A. No sir, but some times we give notice to those witnesses who are certainly to be here next day.

Q. Have you given any such notice since yesterday?

A. No sir.

Q. Have you heard one word said by any one except the persons you have mentioned about this case?

A. No sir.

Q. Who desired you to come this morning?

A. Mr. Levy.

Q. Who went home with you yesterday?

A. I went home alone; the whole company went out together.

JOHN UHLER, *sworn*.—Q. Do you remember attending at the election held in January last, with your sleigh?

A. Yes sir, they hired me at two o'clock to fetch the old men there and home. I went to the school house and they had no beer and Mr. Mannhardt gave me a dollar, says he, "go, get something to drink." I had to take some old men down the neck, it was nine o'clock before I got home.

Q. Did you see Busch there that day?

A. I do not know him.

Q. Did you see any body intoxicated, there?

A. No sir, I did not.

Q. Were you requested by Mannhardt to come there again and vote?

A. No sir.

Q. Did this dollar go in part payment of what you were to receive for your sleigh?

A. Yes sir.

Q. How much did you receive beside that dollar?

A. Seven, altogether eight dollars.

Q. Are you a member of the congregation?

A. Yes sir.

Q. Was that the price you would have charged other people?

A. Yes sir.

Q. Was it more than you got from any body else?

A. No sir.

Q. If a party apply to you for your sleigh, from eight to ten, to go to Germantown, how much would you charge?

A. Twelve dollars.

FREDERICK OBERTHUR, *sworn*.—Q. Did you see any body at the election with a sword cane?

A. Yes sir, John Cope was the person.

Q. What did he do with it?

A. I saw him draw it out some distance, four or five inches, and then push it back again.

Q. Did he draw it in anger?

A. I cannot tell. He did nothing with it; he did not say any thing.

Q. How came he to draw it?

A. I do not know, he was in the school house standing upon one of the desks.

Q. Was he in anger?

A. I cannot tell sir, I cannot tell always whether a person is in anger or not. It was about the middle of the day.

Q. Do you know him?

A. I am not acquainted with him.

Q. Do you know his father?

A. Yes sir.

Q. Did you see him there?

A. Yes sir.

Q. Were you at the meeting of the English party?

A. Yes sir. The first I saw was, they proposed Mr. Keemle as secretary, the vote was taken, and he was appointed secretary—He then began to read some of their resolutions they had formerly. Dr. Leib got up, and did not seem to go with them altogether, he said, "they were declaring war against the church in that manner."

Q. How long did you continue there?

A. I was there nearly till they broke up.

Q. Did they pass any resolutions?

A. Yes sir, I believe they did pass some.

Q. Was there any disturbance?

A. None, but what they made among themselves.

Q. How old are you, sir?

A. I will be nineteen next November.

Q. Were they pretty warm in their debates?

A. Yes sir, Dr. Leib and Keemle appeared to be pretty warm in their debates.

Q. Do you know Mr. Witman?

A. Yes sir—what he said that evening, I could not recollect; he appeared to me in favor of the resolutions; he said, "the resolutions were made by many respectable members of the congregation; he thought they were right—I cannot say the words.

Q. Were you at the opening of the general election?

A. Yes sir—I heard some of the accounts read off, and after the accounts were read off, Mr. Witman sprung up on a chair and cried out, that by the highest authority of law, he would nominate John Geyer and William Wagner inspectors of the election. He took the question, "those who are in favor of it say aye, and those against it no"—some cried out aye, some cried nay in German, and some in English, and there was such a mixture, there was no such thing as telling which carried:—However, some of the English party cried out to Mr. Wagner, that he should take his sta-

tion. There was a great noise and scuffle took place, trying to get him into the enclosure; this introduced disturbance; they tried all force to get him over that enclosure; some held him back, some tried to get him over, some inside were trying to get him in, and some pushing him out.

Q. Did you see Busch?

A. Yes sir.

Q. Did you see Long?

A. Yes sir. At the time Mannhardt came in, Busch said some words, but I could not state what they were, and when he went out again, Busch cried out, "there goes the Lord God of the Germans."

Q. Did you hear any body cry out when he came in?

A. Not that I know of.

Q. Did he say this in German, or English?

A. I could not state, what he spoke it in, but he said it—I speak both languages.

Q. How long did the scuffle last?

A. Not above two or three minutes, the whole of it.

Q. Before Witman got up, was it all orderly?

A. Yes sir.

Q. After the scuffle, did it go on with order and tranquility?

A. Yes sir.

Q. Did you continue there through the day?

A. Yes sir, I was off and on at the other school house.

Q. Did you attend the meetings generally of the German societies?

A. I did not attend many of them, but whenever I went to them, I saw every thing was quiet and peaceable.

Q. Were you at the meeting in the Northern Liberties, when Busch came in?

A. No sir.

Q. At Plumb street?

A. No sir.

Q. Were you at the meeting in Cherry alley, on the same evening they had the meeting in Fourth street?

A. No sir.

Q. Was there a train of men after Mannhardt when he went in to the election?

A. All the person I saw with him was William Berg.

Q. When Cope drew out his sword, was he in a situation that the mass of the people could see, he had a sword?

A. Yes sir.

Q. Who else did you see with a sword?

A. No one, that I can recollect.

Q. Do you know whether young Cope generally walks with that sword cane?

A. I cannot state, whether he does or not.

Q. Are you in habits of intimacy with him?

A. No sir. I believe it is not generally the case with Cope that he carries a cane; but I cannot state for sure.

Cross examined.

Q. Do you know Frederick Dreer?

A. Yes sir, he is my step-father.

Q. Are you his apprentice?

A. No sir.

Q. Whose apprentice are you?

A. I am no one's—I am learning a trade with my father.

Q. What trade does he follow?

A. He is a cabinet maker.

Q. Were there a good many apprentice boys at the election?

A. I do not know of any; only I saw some of the English party, who were apprentice boys, a couple. I do not recollect seeing any on the German side.

Q. Who were those you saw?

A. One was Frederick Kline, the other George Seghley.

Q. Did you vote?

A. Yes sir.

Q. Were you all day at the election?

A. Yes sir, I was off and on.

Q. Do you know Mannhardt?

A. Yes sir, I cannot tell how long.

Q. Is he intimate with your step-father?

A. Not very intimate.

Q. Do you know whether he is god-father to any of your step-father's children?

A. No sir, he is not.

GEORGE MILLER, *sworn*.—A member of the congregation, live in Vine street, near Seventh, have been a member nine years.

Q. Had you any conversation with George Witman about the election, previous to it?

A. I had many conversations, I had one previous to the election about two months—one time I was at my business at my house, he was passing and stopt, and asked me what I thought of the church affairs. I answered him, I did not think much of it for my share, He asked me “whether I did not think it would be a good thing to have English preaching in our churches”—I answered him I did not:—He made several remarks, whether I had any children, and so on—I told him, yes, I had, but it was no reason we should have English preaching so long as I could give them sufficient German education to understand the preaching.

Q. Is the German language commonly used in your family?

A. Yes sir. He then made several remarks which hurted my feelings a good deal; he said as much, “that in the course of little time, they would have the power, majority, in their hands; they would have English preaching whether I agreed to it or no;” he then said, “when they would get the power, they would not shew us no mercy at all, that we must all soon expect it;” at last he mentioned “especially you, who are on the ground belonging to

the congregation," (I have a lease of ground, belonging to the congregation and live on it) he said. I need not expect I could live there any longer after they would get the majority on their side. I do not remember any particular remarks he made after that, we parted.

Q. Did you ever attend any of the meetings of the German party?

A. Yes sir, I believe I have attended all that were held in the city, at the school house in Fourth street of the German party.

Q. Were they always orderly?

A. Yes sir, to my knowledge, they began with prayer and singing likewise.

Q. Were you at the meetings in the Northern Liberties or in Plumb street?

A. No sir.

Q. Were you at any of the meetings of the English party?

A. Yes sir, I believe it was the very first meeting in Cherry street, of that party—I believe it was in November:—I was not there all the time; it was after our meeting had closed, as I was passing in going home; it was the time Dr. Leib and Mr. Keemle had those words mentioned by the witness yesterday—when I went in I saw Keemle up, reading some proposals that were made to them, after he read them, he spoke a little time, afterwards Dr. Leib got up; the first word he said, "if you are going on in this manner, you are putting the cart before the horse"—He then made his proposals what he thought of them; he said, "he thought it was improper to send this writing to the corporation, if they did, it would declare war at once; if they wanted English preaching, they would have to work in a different manner; he said, "all they could do, was, to ask merely a favor of the corporation, to have English preaching."

Q. Did you continue there till they had adjourned?

A. Nearly till they adjourned.

Q. Was there, while you were there, any improper noise?

A. No sir, Mr. Keemle got up, and there was some mistake he made, which made them all laugh. I did not stay till they did close. Mr. Witman got up and made some observations.

Q. Have you ever attended the general election before the one of last January?

A. Yes sir, but not many times—On that day I was not there before ten o'clock.

Q. At the time you were there, was it conducted with good order?

A. Yes sir, except what the constable and Uhler made—The constable took hold of some man, Mr. Riley, I believe, one of the members of the congregation.

Q. At other elections, have you been present at the beginning, when the accounts were read?

A. Yes sir.

Q. What is usually done immediately after the accounts are read off?

A. The next thing is, the inspectors take their seats and proceed to take the votes—To the best of my knowledge I never heard any body on either side appoint the inspectors, the inspectors were already appointed. However I never took particular notice before.

Q. Have you ever known the congregation to appoint the inspectors?

A. No sir, I never heard of that, nor seen it.

Q. Were you there when Mannhardt came, in the afternoon?

A. Not to my knowledge.

Q. Did you observe any particular conduct on the part of Uhler that day?

A. I do not remember what he said, I saw him have a man by the collar, and make motions with his fist. It was the time the flying lions were about, as Uhler said. It must have been two or three o'clock. I was standing at the desk nearly opposite the enclosure; an old man of the name of Bohle was standing at the next desk near me; Mr. Riley and Vanderslice had some words together, and Vanderslice took Riley by the collar and drew him out of doors; while they had the words together, Bohle said, "constables had no business there to disturb the members; how it exactly begun I cannot state. Mr. Uhler was close by Bohle and spoke his mind; I do not know exactly what he said, I stood behind him—I did not pay particular attention to what he did say, but before I thought of myself, I saw Uhler at my left, having a man by the collar, and up with his fist; I cannot say whether he struck him or not; and then the first desk was clear before me, and as Vanderslice dragged Riley out of doors all the people in the school house nearly, followed him. In the mean time, Riley and the constable went out of doors, I see Uhler having this man by the collar. I could not positively say whether it was Mr. Bohle he had by the collar, or not. I jumped behind Uhler, seized him by the shoulder and turned him round, and asked him whether the man had struck him. Mr. Uhler was a particular acquaintance of mine formerly; Uhler said, "no, he did not strike me," then I asked him whether he struck the man, he replied, no; then I told him it was not proper to go in the school house as he did, raising up his fist, I thought we had noise enough by the constable taking off this man, without his making more; I told him I could not wish nothing else but to have peace; he told me "he did not want more than peace himself." I then answered him I did not think it was the proper way to preserve peace.

Q. Did you see any other of the English party active, or doing any thing to disturb the peace?

A. No sir.

Q. Did you see any other person that had been struck by Vanderslice that day?

A. Yes sir; I saw Mr. Spiess, I saw the wound about the eye;

his face was all bloody, they took him in the school house and washed him with vinegar or something. I did not see any further disturbance except it was in the evening some time after dark. I saw Mr. Hoffman and Mills the constable come in. Mr. Hoffman stopped at one, I believe it was Mr. Reisch, and put his hand on his shoulder, says he, "this is your man." I was very near; the constable took him, and dragged him into the street; a great many people followed him; they were anxious to know what he was going to do with him.

Q. Did the constable say, he had a warrant against him?

A. No sir, he did not say a word after Hoffman said this, he immediately dragged him into the street.

Q. Had you observed Reisch do any thing improper?

A. Not at all.

Cross examined.

Q. You are a blacksmith, are you not?

A. Yes sir.

Q. Did you not do business for Witman?

A. Yes sir.

Q. How long have you got a lease of that property?

A. Fifteen years.

Q. Did you not sign this paper?

A. Yes sir.

JOSEPH SPIESS, *sworn*.—A member of the congregation about ten years, have taken the sacrament, attended the last election. I was appointed by the congregation one of the committee to keep order and serve tickets—I came there after nine o'clock; Mr. Long was reading what the congregation had to settle—Then I came into the school house in Fourth street and got my votes there, then I go into the street and serve tickets, and I see an acquaintance of mine, I asked him if he had a ticket; after that I went into the school house, in Cherry street, Mr. Cope was in the school house; when I went in, Mr. Cope went out, I heard him say, "look all such young snot noses was there;" I told him in German, when people was young every one grows to his age. Mr. Cope told me, "you must not talk that way with me;" I told him very well, I talked no more to Mr. Cope in the school house.

Q. Did he look at you when he spoke?

A. Yes sir, he looked in my face and I in his.

Q. Are you so very young?

A. I am about forty-six, I do not know it regularly:—Afterwards I went out after my business; then I went back and forward and served tickets—Then Mr. Long came on the pavement, I do not recollect who was with him; he said to me, "Spiess, which side do you vote?" I told him I did not understand English, I must keep to that side I *swore* to support, *when a soldier swears to his colour I must stick to it*; Mr. Long said, "we should keep peaceable, and must not be angry at any body;" when I go back and forward afterwards, I saw a disturbance in the school house about the people, then I saw, I cant say, how many together

in the school house ; I went to look after it, I thought it was my business, when I come I saw them from the school house bringing out a young man named Riley, I saw a man had him by the collar, tore it half way down. I did not know the man before, I know him now very well ; it was Vanderslice ; then I go out to keep them apart, some fell down, some stand around, and I put my hand on his shoulder, I told him, my friend, do not do so, be honest, keep order and so on, keep in order and you will do very well ; he turned round, he had a piece of club in his pocket and he struck me under the eye ; it was my open hand I put on his shoulder—I knew his father very well, I was a milk man, and served him in Fifth street, the young man had seen me there frequently—As quick as he gave me the stroke he says, “you hold me, and the word and the stroke were so quick as can be, before I could give answer ; I say very well, what do you do that for, to me, and then I went off.

Q. Did the blow hurt you ?

A. It swelled up so badly I could not see out of my eye, the blood flowed down here, I could shew the blood on my jacket now.

Q. A short stick was it ?

A. Yes sir, it was about a foot long, it was half bone and half wood. It was three inches at the top and was turned, it was like a foot of a chair—After that I saw Mr. Weckerle at the corner of the church—I did not know the man nor he me ; he said to Vanderslice, “what you abuse that man for ?” I did not hear what he said in answer, I had my share, I had enough.

Q. Did you see the beginning of the election ?

A. Yes sir.

Q. What was the first cause of riot ?

A. I saw when I came in Mr. Long was reading, when the election begun, I saw Witman jump on a chair, and I understood he had a paper in his hand, I saw it, but I did not know what it was, I cannot read nor write nor any thing at all ; he said, “is every one willing I should be in the box ?” Some hallooed yes, and some no, and then the war began.

Cross examined.

Q. Did you sue Vanderslice for striking you ?

A. I went to the mayor a quarter of an hour after, two men were with me, and I told him about it, how I got abused ; after that Mr. Cope and Mr. Ripberger came in, and Mr. Cope run the Germans down, as it was most a shame to tell. He said, “the Germans going on so, down then at the school house, it was just like a bull bait ; this man Schroeder said, “no, it was not so, they begun together, the one got half and the other got half—Mr. Cope said, “our party cannot get a vote in,” some opposed him, Cope said, “this man was the worst of the whole, and that he belonged only a few years to the congregation ; I told Mr. Cope, he could not prove that, I could shew receipt for rent for five years in Spring Garden, it would make now I guess nine years.” This all took place before the mayor ; he said, “he would laugh at me if

the constable knocked me down like a log—I went away afterwards; The mayor said to me, “if you want any thing you must come on Monday:—Monday I went not out of the house, I was ashamed to go out of the house, people would think I was a great fighter, and looked so scandalous. Friday I came in, I went to the mayor’s office, there some of my witness standing there, I told the mayor about it, Vanderslice swore I had hold of him, and he had to give me a blow to get shut of me. Mr. Wharton says, “better make up together,” Vanderslice would not make up.

Cross examined.

Q. Was he the only person examined against you?

A. Witman was there.

Q. Did he swear?

A. I did not see it.

Q. Was no person examined but Vanderslice, that you had hold of him, and he had to strike you to get rid of you?

A. Mr. Ripberger was there.

Q. Was not John Schultz there and swore to the same thing?

A. I do not know him.

Q. Did not another man swear to what passed?

A. I do not know.

Q. You say you cannot write, who wrote that? (*Spiess’s signature to the German petition.*)

A. The first time I was at the meeting I told Mr. Buchhalter to write it for me.

Juror. Mr. Spiess, if you cannot read, how do you know that is your name?

A. I know the first name, I can make it out.

Q. Was it read to you before you signed it?

A. No, I cannot say.

Q. You did not say any thing about the beer that was there?

A. Nobody asked me about the beer, there was beer, I did not pay any thing for beer, I guess it is all paid for.

Q. Why do you think it was paid?

A. I was not asked for pay—I drank some too; I had some provisions in my pocket.

Q. How many women were there?

A. One woman who belongs to the house.

Q. Who helped Mannhardt to fold the tickets?

A. I do not know, I did not see but one woman; there was one woman brought *balsam apple* for my wound. I saw no more than two women there; they were doing their work there.

Q. What oath did you take to support the German language?

A. I took an oath I would stick to the German language as long as God gave me life.

Q. Who administered that oath to you, sir.

A. Mr. Schmidt, who is dead.

Q. Express as near as you can what that oath was?

A. I know it well enough, but I cannot express it in English—I

thought with myself when any body swore to his congregation, or a soldier to his colour, he ought to stick to it.

Q. What Mr. Schmidt was it?

A. The minister of the German congregation.

Q. How long ago?

A. I guess it was in 1807, then I paid my first pew money, I cannot recollect exactly when I took it. (*The witness, after giving a long account of his conversion, proceeded.*) I went to Mr. Schmidts, he asked me, I suppose you know what is right and wrong; I said, I knew it very well—next time I took the sacrament, Mr. Schmidt gave me a book what Martin Luther suffered for his religion; and afterwards I took sacrament in that church. I read that book—I can read printing, not writing.

Q. That is, what you mean by swearing?

A. Yes sir. (*The witness was shewn a German book, which he read with ease.*)

JACOB RILEY, sworn.—A member of the German congregation, between four and five years, take the sacrament.

Q. Have you attended the meetings before the election?

A. Yes sir, two or three times, it was conducted orderly, began with singing and praying. When my name was called, I give in my money and after I was done I went home. It was the *fippenny-bit* society. On the day of the election, I went there about half after nine o'clock. I heard a great noise, I saw them when I went in, pulling in and out; Godfrey Seeler took hold of a man by the foot, and his hat fell off, I do not know who it was, he picked up his hat and walked out one side—Steiff took a spring and knocked him down; there was a high stove in the middle of the school house.

Q. Do you know Steiff?

A. Yes.

Q. What party is he of?

A. I cannot say, I saw his name on the ticket on the English side for church warden—There was a round stove as high as I am, he came and run to knock Schwicke down and threw the stove over—Then were several old men, I could not tell their names, I saw them taking up the fire and throwing it in the snow, with that I walked out, as he was hanging over, one on the German side pulled him away, and Schwicke took his hat and walked away; he said he would not have any thing more to do with it. From that I walked off and went over to the other school house—It was about eleven o'clock when I came into the school house again, I was told a man named Loos, pulled a piece of paper out of Witman's hand, I saw a great crowd, cry out, "find him out;" I saw Vanderslice, I put the broad of my hand on him, said I, Vanderslice, what is the matter; he turned round very hasty as he is, says he, "Riley are you going to prevent me from taking this Loos; Vanderslice was trying to get this Loos out; Vanderslice took me by the coat and tore it so far down, pulled me from the school house to the porch and this Jacob Lex took hold of me.

Q. Did any of them say any thing?

A. Not any thing I heard; they dragged me out and got me as far as the porch; on the porch I put my hand round, and tore my wrist by a nail.

Q. Did you say any thing to them when they were dragging you so?

A. I hallooed, let me alone, let me alone; I have got as much right as you have. When they got me off the steps, I was pushed by Vanderslice into the snow. Jacob Lex stood by; they hallooed, pull him away, and got up again and wiped my face. When I fell in the snow, I saw Spiess went to prevent me from being taken off, and he received a blow; they left me there, and Spiess and Vanderslice had a word together; I saw the blood on Spiess's cheek; afterwards Vanderslice called me on one side, and Weckerle said to him, "are you not ashamed to strike this man in this manner, a little more and you might have killed him." Vanderslice said to me, "Riley, I am very sorry," and the tears come in his eyes; the German side wanted me to sue him; I told them I never had any sueing, or any thing to do with law, and I did not wish it; we have always been good friends. Then I went to the school house, and had my wrist washed. Mannhardt, I heard, was going to give in his vote; from that I did not stay any longer, I walked over to the school house door, I could not see how they were marching along—I saw Andrew Busch, I heard him say, "here comes the Dutch, their captain," he did not say any thing to them, but after he had given in his vote, and was going out, he says, "here comes the Dutch, their Lord God," in German; I happened to have a segar in my hand, and went to the *merino* to light it, there was one of the name of Eberle, Charles Bloomer, and one Dannacker, and five or six young lads, confirmed at the same time I was, they were on the English side, says Dannacker to me, "Riley, why you Riley, you *bugger*, you do not vote the English ticket;" says I, I voted the one I liked; says he, "if your brother had been confirmed, he would have voted the English ticket;" says I, my brother may do as he likes, I will do as I like.

Q. Did you gently lay your hand upon Vanderslice?

A. My heart never thought to injure Mr. Vanderslice, more than a child two years old; he had been on a good footing with me; he told me he was ordered there by Mr. Geyer to keep peace.

Q. What did Vanderslice say, Geyer told him was his object?

A. He did not tell me any further; he was called away at the same time.

Cross examined.

Q. How much beer was there that day?

A. I saw one barrel was full, and one empty.

Q. How much did you tell Mr. Geyer was there?

A. I told him there was one full, and one empty, and one out by the door, but the same that was at the door, was taken out again.

Q. Were you one of the committee of vigilance?

A. Yes sir, but I did not stay there all the time.

Q. Who appointed you?

A. Some of the men of the *fippenny-bit* club.

Q. Did you sign that paper?

A. No, I did not sign it, but I told a man to sign it for me; I was in a hurry to go home, my business would not allow me to stay up late, I have to rise about one o'clock. I understood it was for small books, I did not know what it was, and I gave a *fippenny-bit* to get it printed. At the same time I went to Mr. Geyer, I had some money to get; says he, "Riley how much beer had you," I told him, he says, "why did you not treat me;" says I, if you had come over, you might have got it, and he told me to come, in a few days to get the money; whenever I saw him, he told me of treating him.

Q. Who was treasurer?

A. I do not know what is treasurer.

Q. Who received your money?

A. I believe it was Mr. Hoeckley.

Q. Do you know of any meeting called by the Germans for the purpose of interrupting the English?

A. I do not know, there was a good deal of noise and talking.

Q. Did you not tell some one, there was such?

A. I did not until I heard it; Godfrey Schwartz told me, there was a meeting, says he, "Riley, if you had been there night before last, you would have seen how the English and Dutch went on, about the English preaching;" I told him, I was glad I was not there.

Q. Did you not tell some one, that you were called upon, to go to a meeting for the purpose of interrupting the English?

A. No sir.

KEEMLE. What did you say to me?

A. You were reading a little book in your office, and you told me, to take it home to my wife, and see if she would acknowledge it, I did not, I told you I would not have any thing to do with it.

Q. What book was it?

A. I do not know rightly what it was myself, you read some of it; it was Dutch and English.

Q. Do you recollect any thing else passing?

A. No sir.

Q. When was it?

A. About a week before the election.

CHRISTIAN F. TACKMAN, sworn.—One of the congregation, lives in Coates's street, Northern Liberties, has been one of the overseers of the poor; did not attend any of the meetings in the Northern Liberties previous to the election; was not at any meeting there when Busch was; was at the general election; went out to Market street and when he came back it was about two o'clock; there was a great crowd about the school house, stood about a minute there, saw Vanderslice strike Spiess, saw a mark about as large as a quarter of a dollar; saw no disturbance in the house; the elec-

tion was carried on as usual; always attend the election, and the appointment of the inspectors was by the president of the corporation; was there in the evening, not when Mannhardt gave his vote.

HENRY LEHR, *sworn*.—Was one of the inspectors at the election; when I went there, it was between eight and nine o'clock; the accounts were nearly closed; as I was appointed one of the inspectors by the president, I stepped into the enclosure; I saw Long, Honey, Helmuth, Witman, and I can't recollect who else; I sat down till the reading was closed; when it was closed, Doct. Helmuth made some remarks, that they should be peaceable and quiet, and go on as they ought to do—I mentioned to Honey, the president, that he should now mention who was the inspectors, &c. He was going to do it, presently Mr. Witman jumped on a chair and held a piece of paper, I could not rightly understand what it was, he said, "the congregation was to appoint the inspectors, agreeable to the advice of the attorney-general; he had his back towards me, I was a little astonished at his getting up; he called the voices; there was no decision to my knowledge given on either side; some called yes, some no; there was no decision whatever; we the inspectors, Mr. Hoeckley came over at the same time, and took his seat too; then Honey stated who the inspectors were, to the best of my knowledge.

Q. When were you first informed you were to be an inspector of the election?

A. It was about two days before; he told me I was appointed by him one of the inspectors—I rather excused myself, he said, "if I wanted to excuse myself, he would come to my house;" I knew he would, I promised him, I would. There was a rioting about these voices to the best of my knowledge, Mr. Witman appointed Wagner and Long; Mr. Long was in the enclosure, but Wagner I did not see. I cannot rightly recollect whether we begun to take votes or not; I believe we did begin to take votes, and Mr. Long did not interfere, did not pretend to take any. When we took in votes, Witman raised himself along side of my elbow, pretended to examine as well as I; I told him several times, Mr. Witman you better step back, you are in my way now. There was a hallooing at the same time, he would go from my side, I begged him to go one side; he would not go away; presently then I heard a noise; there is a pillar where the enclosure is fastened to, the steeple stands on; presently I heard a great rioting by the place; Witman did not know what it was, he was frightened. I heard a man coming towards the enclosure falling on the railing; I looked round and saw there was Mr. Wagner, I took hold of him, and begged all to make no noise, and I hauled him in; they let go when I spoke to them, when he fell towards the enclosure. I did not know him at first; he is my friend; I asked him, when over, if he was abused or hurt; he made a laugh and said something; he is a man of a very mild disposition, not a violent man at all; I cannot recollect the words; the election went on. I am not cer-

tain whether he said no or not. Witman would still insist to stand there; I got a little angry, said I, you see all this disturbance is because you are so near, the people want you away; he would not go away; the people was always hallooing to try to get him away; then Hoeckley took the ink stand away from him, and he had to go back; and he sit afterwards back at the table. I heard nothing after that.

Q. Did you observe any person have a difference with him when he stood by the pillar?

A. No sir, but all seemed a little shocked when that man was that way. There was a little riot there, I do not know what it was.

Q. Did you observe any endeavor to prevent the English party from giving in their votes?

A. No sir.

Q. Was it more than usually noisy?

A. Yes sir, rather more noisy than it used to be in former times, in these two instances.

Q. Do you recollect when first this difference of opinion arose to any height in the congregation? Have not the elections been more noisy since these disputes arose between the parties than they used to be previously to them?

A. There never was no such noise before the dispute began.

Q. Did you attend the counting the votes?

A. Yes sir.

Q. What was the majority?

A. I knew at that time, but I do not recollect; there was two to one.

Q. Have you had any conversation with any of the other party?

A. I had some conversation with some about the English preaching; Geyer and Witman came to my house and asked what I thought of it; I told them I did not think any harm of it, but stated, the German ought to be still preserved. I would keep myself on the neutral side; I had nothing to give away, but if the members of the congregation had no objection, I had none, if it could be done in a christian like manner. I was told there were tickets sent, and they made a distinction; they sent to some and not to others; I had not received any. Witman said, "as to that, that he would give me one; I would not agree to give any thing away from the church. Mr. Steiff met me, he had a resolution in his hand, he showed me it, I did not read it all; I think it was to carry away some of the Germans against some rules and regulations of the German. I thought rather hard of it afterwards; I heard the same debate on the resolution in the school house; at this very meeting when the invitation was. This was a short time after I saw Steiff; one evening I stopt in there, and stood against the wall and heard the debate; I had not heard the resolution, I came too late; I thought it rather hard the Germans should be treated this way. Dr. Leib, said, "he would not go that way work," he said, "he would wish to give the hand, not the foot."

Q. Did Long ever call upon you about this dispute?

A. One day he called upon me; he asked me about this noise, whether I did not think it would be settled. I told him yes, I would be for the making up, of course; says he, "we would be for making up, if it could be done;" I believe I made mention, do you want the church or any thing; "no," he said, "we do not want any thing;" why, says I, then it can be made up. I could not give much advice, I was sued myself and I did not like to say much. He said, "people did not like to say much;" why said I, it is no wonder; if people say any thing, there is harm made of it, they are bound over, &c.

Q. When was this?

A. About two or three days before this trial.

Q. Had you not a conversation at the house of Eberle?

A. Yes, I recollect stopping there one day; Long came there; something was said about making up; Eberle said, "they had an advice from the ministers and synod, they should make it up, it would be the best way to do, if it could be settled;" well said I, the best way is, you have taken it to court, you can take it away again, you can take the suits out of court. This was Charles Eberle. It was a few days since; after the conversation with Long.

Q. You understood, that they were going to take it out of court?

A. Yes sir, they said if they took one out, they ought to take all out; because I was sued too, and I did not want to go to court. Long mentioned if we would give him a church, it would sooner make it up.

Q. Sooner?

A. He did not say sooner; I made no reply on it.

Q. Did Long say this after Eberle said, they had the advice of the ministers?

A. I think, afterwards, I think I made mention we had no church to give.

Q. Do you recollect the time Mannhardt gave his vote?

A. Yes sir, I saw no more than him; I recollect he came in; one said, "there is Mannhardt, give him a little room, I recollect that very well. I did not see him the whole day before nor afterwards.

Q. After the dispute and scuffle had ended, did the English party generally come and give their votes to you as judges?

A. Yes sir.

Q. Did Witman vote?

A. I did not see him vote; I cannot tell.

Cross examined.

Q. How did you know the tickets apart?

A. I cannot say that, sir. The English and Germans came and voted.

Q. Could you know them apart?

A. I believe I could, the Germans were larger.

Q. Do you not recollect, the eagles were on the German?

A. Yes sir; the eagle was not always shown on the outside.

Q. Was there any other way that you know the English votes, but that the Germans were larger?

A. Some of the English were large too; some was large and some small on both sides; I could not tell always.

Q. Had you a list of the voters to see if the voters was entitled?

A. No sir.

Q. When any person came to vote, did you make enquiry, if he was a pew holder, if he was a member and go through the whole questions?

A. To the best of my knowledge, I did what was my duty to do; I took the votes and enquired if they were members, and into the qualifications they had.

Q. Do you know whether Witman put a good number of questions to the voters when they came up?

A. I believe he did, and *he was then set back and could not do it.*

Q. Did you see Witman write any thing, make memorandums, or had he any paper in his hand?

A. Yes sir, I did not see what he wrote.

Q. Had you any mode of telling whether those persons who came up were entitled to vote, except their own assertions?

A. No sir.

Juror. Has it always been a custom to have a list of those who were qualified?

A. I have not been an inspector before, but it is not in my recollection that it was the custom to have a list.

Q. Is the congregation very large? Do they fill the church very full?

A. I cannot tell that; sometimes the churches are very full, and sometimes they are not.

Q. Do you not know, you received a number of illegal votes that day?

A. No sir, I do not. There might have been some, but not to my knowledge; we sent several off.

Q. Did you not send away some of the members of Meyer's church when they came there to vote?

A. It is likely, I do not recollect.

Q. Did you not afterwards receive some, from members of Meyers's church?

A. I believe, if I did, I had a reason for it; I did not care what side they were; I was not of any side, then, much.

YEATES, JUDGE. Were there any of the members who had left the church and gone to Meyers's, still had pews in Zion church?

A. Yes sir, some had, some had not.

Q. What standard had you fixed, by which you determined whether persons were qualified or not?

A. By the common rules of the church and charter, which has always been the practice. I asked the voter if he had taken the sacrament in Zion church, and whether he had contributed to the church; if he said, yes, his vote was taken; I took his word for it,

unless some members owed twenty or thirty years pew money; I did not consider them members, of course. These were all the questions I put, that I recollect. About eight or nine years ago, there was an opinion brought in by Mr. Graeff, and the *high judge* or the attorney general said, they should elect the inspectors by the congregation; but at the same time, they did not mind it, they went on; Mr. Woelper was president; he appointed the inspectors and afterwards it was always done so. When Mr. Muhlenberg was president, I stood by him and saw him appoint the inspectors; it was before this congregation separated.

Q. When you spoke of more suits than one, what did you mean?

A. I meant that I was sued myself, Mr. Witman sued me. I am always for peace; I saw the stove go over; I cannot tell who knocked it over; I believe it was after Wagner got in; it was in the scuffle when Wagner was over; I hallooed that they should out with the fire, and they did put it out, and where I stood, it was all water, it was so cold, I called for something to drink; they brought me water, I could not drink it, it was so cold; they asked me if I wanted beer, I told them no; they asked me if I wanted wine, I told them no; they brought wine, I drank some, there was some in the glass, I poured it out and gave to Mr. Kauffman, he is an old man, and came there shivering to vote, and I told him, here is some wine; that was all I gave.

Q. Did you not generally know the people who came up, and what were their qualifications?

A. Yes sir.

MR. J. INGERSOLL, (*exhibiting to the witness a book*)—state, whether that is not the description of the church warden's duties, rights and obligations?

A. Yes sir.

Q. Was Witman a warden of the church?

A. Yes, he is a warden now.

Q. Did he act as warden before the election?

A. Yes sir; after the election he did not do his duty, for I had to do a good deal of it.

JOHN K. HELMUTH, *sworn*.—One of the German Lutheran congregation.

Q. Have you had any conversation with John Long, previous to this court, relative to this dispute?

A. I had a conversation with him about two or three weeks ago, he seemed to express a desire that the dispute should be settled, and wished that my father should use his influence to have it settled, if possible. He did not exactly state the terms, he said, "that some of the leading men of each party should meet together with a view of having it settled; he did not exactly state what the cause of the difference was.

Q. Are you acquainted with Mr. Mannhardt?

A. Yes sir, I have known him perhaps ten or twelve years.

Q. Is he a man of good character and conduct?

A. Yes sir, he came from Germany with recommendations from a very respectable house in Altona, who, I believe, were his relations.

YEATES, JUDGE.—Is he a warm, ardent man in his manner?

A. I believe he is.

Cross examined.

Q. Is he in the habit of visiting at your father's house?

A. I believe he goes there occasionally.

Q. Was there not a time when he was excluded?

A. I never heard of it.

Q. Is the congregation in a very flourishing state, now?

A. There is certainly a falling off in some respects; it is the difference in party.

Q. Is not the congregation more flourishing than it was last year?

A. I do not interfere much in the church affairs, I believe it is quite as prosperous as it was twelve months ago.—*Adjourned.*

TUESDAY, 16TH JULY, 4 O'CLOCK, P. M.

HENRY SCHRAEDER, sworn.—Has been at the meeting of the German society, does not belong to it.

Q. Did you attend any of their meetings previous to the election?

A. Yes sir, I was at their last meeting.

Q. How did the German party go on that evening; were they orderly?

A. Yes sir, there was nothing I saw out of the way. I heard Mannhardt say, they should be peaceable, quiet, not have any fighting or any disturbance. I was at that meeting until they broke up and went from there home.

Q. Were you at another?

A. I was several times there; sometimes I staid till the meeting was over; sometimes I went away. I was at one of the English party's meeting in Fourth street; after the meeting in Cherry street was out, I went over there with some of them, and staid a little while there and went home; I could not say any thing I understood there, I did not see any thing particular. I was at the election, was not there from the first beginning; when I came there I saw the stove lying down; some part out of doors and some in the room.

Q. What time of day was that?

A. A little past nine; perhaps half past nine: they were just beginning to give in the votes; after I was there awhile, I was standing back on the bench looking at them, there was one gentleman standing up on the inside where they were giving in votes, he had a book in his hand taking down the names. I heard some people call out, he should come out, but he did not mind; he continued there; some cried out, "take the book from him," some went and took the book from him; after they took the book from him, the people who were standing round the table, told him to set down at the table with the rest that the people might have a chance

of giving in their votes; after that he went round I believe, I had no chance of seeing more. Vanderslice was coming, some woman called out, "take that man;" Vanderslice was going to take the man who had took the book from Mr. Witman; I heard Geyer call to Vanderslice, "catch that man"—they went all together in a lump; I could not tell who they had or who it was, I seen they had hold of a man by the coat—I did not know any thing further—I went over to the school house in Fourth street and stood there a little bit.

Q. Do you know Mannhardt?

A. Yes.

Q. Did you see him at the election?

A. No.

Q. Were you in and out at the election room, during the day? Did it go on peaceably?

A. Yes, as far as I saw; there was so many appointed of the German side to keep order, and get the people in and out, that they might give in their votes. After a while, I cannot recollect the time, whether it was before dinner or after, I saw a crowd of people on the pavement near the church; Vanderslice was among them, and I seen Vanderslice had hold of a man there, and some of them wanted him to leave the man go; one of them, Spiess clapped his hand upon his shoulder, and said, "Vanderslice, you had better leave that man alone." Vanderslice, upon that, turned round and struck the man with a little club in his face. I told him then, he better come away, and leave them fight it out themselves. He went in with me in the school house.

Q. Do you know what the name of that man was, that Vanderslice first took hold of?

A. No, I do not know.

JOHN KOHLER, *sworn*.—A member of the Lutheran congregation; in the corporation at present, was elected in January.

Q. Have you attended any of the meetings of the society previous to the election?

A. Yes, I went to one in the Northern Liberties, Busch was at. They were singing, Mannhardt said prayer; a little time after that, Busch came in, Andrew Busch and John Blank. Busch sat himself alongside of me; says he in German, as well as I can explain myself, "have you got such an *ornery* fellow for a president?" Mr. Eberle was president. He did not speak out loud, he said it to me; I made no reply—there was something read, I cannot recollect what it was, I believe it was about a school plan—after that I made a motion to have it read again; the motion was seconded; Busch came up to me, he was sitting off me at that time; he clapped me on the shoulder, says he, "that is right, brother," (in German.) After that was read, there was something else read off about having English preaching in our church; I believe Mannhardt read it, I will not be certain. Busch held down his head, and said, "it is a lie," (in German;) he repeated it several times; he said more to it, but I could not understand it; it caused a little

noise; I believe the president said, "who made such a noise?" one Miller, who sat before him, says, "it is Busch, he thought he could not understand no German, he could not understand but English. Says Mannhardt, "be quiet, I am very glad to see Mr. Busch come into our society, to see and hear what we are doing, what is going on." Mr. Busch said something, that he did not ask for any thing yet; something was said, I believe a piece of paper was read off or something or another, I cannot recollect. After that, Busch moved himself, and sat a few benches from me.

Q. Was he quiet afterwards?

A. As far as I could see; I did not take much notice of him; something else that I can't recollect passed, we sung a hymn and prayer and the meeting was closed.

Q. Did you attend the general election?

A. I came there, I believe it was after eleven o'clock. There was no confusion that I saw; I never attended elections before this time; I was there about four o'clock, not later.

CHARLES KILEG, *sworn*.—Was at the election, when Mannhardt came to the election, Busch said, "here is the captain general," (in German,) I heard nobody else say so; after Mannhardt was going away, he said, "there is the Lord God of the Germans," very loud. I see in the evening the breaking of the window, I heard, I run to see what was there; I see two men sitting close by the window, I say, gentlemen, what make you there, they say nothing; I said to the constables, you had better go out, what make you here. I do not know who he took hold of, I saw him take hold of somebody; it made a disturbance, he took him by the coat and dragged him out, and afterwards took another man out, turned him into the street. I went home afterwards.

Cross examined.

Q. What countryman are you?

A. I am a Saxe, I have been one year here.

Q. At what time did you arrive?

A. I arrived in July in Baltimore.

GEORGE MILLER, *sworn*.—I was a clerk at the election in January last; I heard Mr. Honey nominate the inspectors, so I stept over and the election began. I was busy and could not see what took place; I heard him call me.

Q. What prevented the election from going on?

A. I saw Mr. Witman jump on a chair and proclaim something; what he said I could not understand; it created a disturbance, it lasted about a minute; afterwards the election went on regularly. I was not a clerk at an election before.

Q. Were you present at one before?

A. Never, sir.

Q. Do you remember Mannhardt's coming to vote?

A. Yes sir, I perceived when he came in at the door, another gentleman, I could not see him, called out, "make room, Mannhardt comes." I heard another voice say, "their captain general;" I do not know who it was. Mannhardt came to the enclosure and

gave his vote and went out again; after he went to the door, I heard another voice say, "it is the God of the Germans."

Q. Did it appear to be the same voice?

A. I cannot recollect.

Q. Was their ample room for the inspectors to carry on the election; or did the stand Witman took, incommode the inspectors?

A. Yes sir, I heard them very much complain about it, and request Witman to go away. Hoeckley told him to step round on the other side, at the table, he might take a seat there. He did not go in consequence of that request; he staid for a good while; at length Hoeckley took the inkstand from him and then he sat down.

Cross examined.

Q. Are you a master of one of the schools?

A. Yes sir.

Q. Did you ever attend any of the meetings?

A. Yes sir, several.

HENRY C. HYLE, sworn.—A member of the German Lutheran congregation; did not vote at the last election. One day shortly after the election I met Mr. Jacob Mechlin at the corner of Race and Fourth streets.

The prosecution objected to the statement of what Mr. Mechlin had said.

The defendant's counsel argued, that the testimony was admissible to shew, that Mr. Mechlin had considered himself one of a party, and that in his conversation with Hyle he had declared what were the objects of the prosecution.

The attorney general replied, that it was not admitted, that this was a party prosecution, or that the friends of English preaching formed a party. Nothing said by Mechlin could therefore affect the case, unless they adduced testimony of something to discredit his evidence.

YEATES JUDGE. Any thing that may be offered to shew, that Mechlin has been mistaken, must be admitted in evidence so, his own declarations relative to what has passed in court; any thing that has passed from his own lips which has bearing upon the question, so far is it to be admitted; but his declaring himself one of a party and what they did as a party, I cannot possibly think such evidence admissible.

The defendant's counsel prayed that a note might be made of the point.

Q. Had you any conversation with Mr. Mechlin of what took place at the election?

A. Not any of what happened at the election.

Q. Had you any conversation with him since?

A. Yes sir, but I do not know that what he said will contradict what he said here. I did not hear his testimony until I heard Mr. Ingersoll state it just now; I did not attend. I am a perfectly impartial man, belong to neither side.

Q. Did you hear Godfrey Cope say any thing about the German petition?

A. Yes sir, I have heard him frequently halloo about the bloody German petition; more than one hundred times, he has said it; every day since the election it has been the conversation in market. My chair stands near to his; I could not help hear it. One day in particular I was speaking to him myself, shortly after the election, before the grand jury found a bill of indictment against these men, he said, "they would try all possible means in their power to make out this petition conspiracy; if they could bring it in conspiracy, it would be in their power to put every man of them in the work house seven years, more or less; and then we will see whether we will have a church to ourselves or not." He was speaking of their party. This conversation ended with this, we said no more about it.

Q. Did Cope say of what party he was?

A. He always said he wished for English preaching.

Q. What did Mechlin say about it?

A. Mechlin did not hear that; there was some conversation after that; he made remarks that no respectable man would attempt to uphold the German language any longer, only such as wood sawyers, scavengers and such like; that no decent man would be seen in their company, much more in the church. There was nothing more in that conversation; but in another he said, "Mr. Conrad Weckerle must have a good deal of money to spare to uphold the German's cause." Mr. Cope remarked, "if Mr. Cooney Weckerle had so many dollars to spare, they would soon help him to get shut of some of them."

Q. Did you hear a conversation with Busch and Cope?

A. Yes sir, I heard a conversation with them in the market; I could not understand all, but at last Busch turned his face towards me and I heard him say, "there is one article will go against us hard, Witman knows an article of the bye-law which authorized the president to appoint inspectors which will make it appear that Witman was the beginning of the disturbance."

GEORGE HOUSER, sworn.—Is a member of the congregation, was once a member of the corporation in 1804; there were some very ridiculous tickets put in, in 1805; the tickets were thrown to one side, the congregation would not receive them, they were scandalous, different names in English were put on them.

Q. Were not the names of women put on them?

A. Indeed I cannot recollect.

Q. Was any thing indecent put on?

A. Yes; there were people put on, that was very improper to put on these tickets. It is so long ago I cannot remember the people's names put on; there was a good number of tickets thrown away, the congregation would not receive; there was a ticket came there with *Poll Bell's* name on; there were a great number wrote their own tickets and in a very ridiculous manner; they would not be received at all by the inspectors or the church. In

1805, when I was elected in, as a member of that congregation with Krebs and Cope, I do not remember any thing that was not correct. The last election I attended and after the church books were settled, the judge of our corporation has a right to appoint according to a law we passed in 1805.

Q. Was there any improper conduct at the last election?

A. There were many of the tickets put in by many people that were not members of the congregation. The last election was most ridiculous, I never saw such a going on in religion in my life, both parties were violent and ready to knock one another down. (*Pointing to Mr. Witman,*) here is a gentleman who made as much noise as any; he jumped over the bannister and kept a little memorandum book of the votes that were given in. Cope was a little violent, he said, "a great many Dutchmen were coming in to take their rights from them;" I did not say a word to them, I did not trouble the congregation, but to put in my vote and after that I went away.

SMITH MILLS, *sworn*.—Did you go to the election in January last?

A. Yes sir.

Q. Who directed you to go there?

A. Alderman Geyer asked me to go there.

Q. Do you belong to the congregation?

A. No sir.

Q. Had you any warrant against any member of that congregation?

A. No sir I had not.

Q. Had you any process against any man there?

A. No sir.

Q. What time did you go there?

A. I went there in the morning, I do not remember the hour exactly.

Q. When were you first told to attend?

A. The day previous to the election, I was first spoken to and on the morning of the election I attended at Geyer's office, and he told me, to go there as an officer. At the first beginning of the election Witman read a paper which I think he said, was an opinion of the attorney general; after the paper was read I did not understand a word that was said, it was all German—he read it in English.

Q. Did you receive any injury while there?

A. Yes sir, I received a blow from some person, but I do not know who it was. I received two blows; I was knocked down in the school house; I was sitting on the window seat and broke a pane of glass accidentally, another officer was speaking with me; some person came up to me, I thought he was an overseer, and talked to me in German, I did not understand him; some person behind me told me he was abusing me; I told him if he spoke to me in English I would answer him; he struck me and knocked me off my seat. I collared him immediately and was going to take

him out to a magistrate, but the crowd pressed around and took him from us; I caught on the seat before I fell to the floor. I received another blow from I do not know whom.

Cross examined.

Q. Did you give no other provocation?

A. I know of no other.

Q. Was the conduct of these people orderly?

A. No sir, not in the least.

Q. Are you in the habit of attending places where people are suspected to misbehave?

A. Yes sir, frequently, not at an election at a church, I never was.

Q. Do you know Charles Kileg?

A. No sir.

CHARLES KILEG, called.—Q. Is this the man?

Kileg. I do not know if this was the man, there were two constables.

Mills. I do not know if this is he—I was called by alderman Geyer, Wagner was on the railing, I did not know him, but I thought by their pulling him, and his climbing over, he was the man that caused the disturbance, I therefore pulled him back; there was, a considerable row took place at the time; the stove was knocked down, I do not know that any person was hurt.

Q. What did Geyer say when he called you up?

A. He called me to come there; Vanderslice was at the other end of the school house, I will not be positive, but he was not there any how, for I was there myself.

Q. Were you there when Lex was struck?

A. No sir, I believe not, I did not see it.

Q. Did you see Geyer have hold of Wagner?

A. Yes sir.

Q. Did you see Andrew Busch?

A. Yes sir.

Q. Did you see him do any thing?

A. No sir, I do not recollect.—*Adjourned.*

WEDNESDAY, 17TH JULY, 9 O'CLOCK, A. M.

FRANCIS VARRIN, sworn as interpreter.—(Translates)—“Yes, we pray you for the sake of Jesus Christ, our Saviour, to comply with our prayers, and be more over convinced, that we, dear fathers and fellow citizens, in all such measures which shall contribute to the perfection of our German worship, with all our powers, our bodies and lives will support you.”

Q. Are not the words denoting “body and life,” commonly used on solemn occasions to imply an earnestness and force, without a criminal intention. *(The prosecution objected to an answer being given to the question, upon the ground, that it was for the jury to decide whether the words bore a criminal import.)*

A. It is quite a common expression, innocent, they are not used

in a criminal sense, never in a malignant sense, this idiom is not to be confounded with the other German idiom, to be for a thing by death inclined; there is a great difference between these words.

Q. Could you refer to any German author in which these words are used in that sense?

A. Yes; it is an expression of the attachment, inclination for a thing; the words "body and life" are used in some prayers; *Faubel* would prove it.

Q. Have you read that paper over?

A. Yes.

Q. If you had seen that paper; it had been put in your hand, without your having any knowledge of the dispute, and you, as a literary man were to give the meaning, to translate it as not applicable to any dispute here, to transfuse the spirit of these words in the English language, upon the oath you have taken, how would you translate them?

A. The same that I said before, it shows their attachment and love to a thing; these words are used by the most sincere friends to each other in parting; the bride and bridegroom use these expressions towards each other.

Q. Would you understand them as conveying a threat?

A. By no means, it is an innocent expression, in prayers it is used.

Q. Have you any dictionary compiled after the manner of Johnson?

A. I have not one that would be large enough; I have only abridgements that do not give sentences; there ought to be such as would teach a foreigner the German language, not such as would teach a German a foreign language. These words are used in hymns, in all kinds of familiar speech and never in a bad sense.

Cross examined.

Q. Were you called upon to translate here generally an expression, or were you informed what particular phrase you were to translate?

A. By no means, I was not told what particular expression I was to translate.

Q. But you were spoken to about these particular words?

A. Oh yes, many men spoke to me about it.

Q. Did Mannhardt speak to you about it?

A. No, not at all.

Q. Did you ever see that paper before?

A. No sir.

Q. How long have you been acquainted with Mannhardt?

A. About three years, and I have reason to give him thanks, he is my benefactor, and a noble fellow and a man of great piety.

Q. Have you a German library?

A. I have a small selection of books; I have no money to buy many.

Q. Are you a man who has read a great deal?

A. Yes sir.

Q. If a man should say to another, "I will take your horse from you," and the other should say, "you shall not, I will defend him, *mit Leib und Leben*;" what does he mean?

A. He means that the horse is dear to him, infinitely—"as dear as my eyes, as dear as my life. I cannot let you have it." If he say, "*auf Tod und Leben*," then he might mean, he would defend it with violence.

Re-examined

Q. If in a remonstrance addressed to an incorporated body, these words be used, "we will support you *mit Leib und Leben*," would you understand it in a lawful or unlawful sense?

A. Lawful, certainly.

Q. What observation did you make upon the dictionary Mr. Ingersoll has? (*Mr. J. Ingersoll had read during the witness's testimony, the definition of these words in a dictionary of French and German.*)

A. The language cannot be learned from such dictionary.

Q. In that dictionary, are these words used, as they would be by a German?

A. No, they are used in the sense of a Frenchman.

ATTORNEY GENERAL. Do not all dictionaries give the correspondent idioms of the languages into which they are translated?

A. Yes.

Q. Is it not the practice of all authors, if, when they translate from German into French, they give the French idioms, do they not on the other hand when they translate into German from the French, give the same idiom?

A. Yes, but they keep the French idea.

Q. Here is a German publishing a dictionary, and he gives to the German and French, will he not give the French expression correspondent with the German idiom?

A. Yes sir, but he gives the French idiom.

Q. What sort of dictionary do you put in the hands of your scholars?

A. Muhlenberg's dictionary which is adapted to teach the German language.

Q. Does the word *mit* make any difference from *by*?

A. It is much more innocent than "*by*," it is quite innocent, "*mit*."

DOCT. HELMUTH, sworn.—The literal translation should be "with body and life." There are two sorts of expression; the one is, by adding the preposition, "*bey Leib und Leben*;" the other "*mit Leib und Leben*" as it is here; "*bey Leib und Leben*" refers to the person who is spoken to, and implies a sort of threat, but a threat that a mother to her children will give, who will say, "do not do that by body nor life;" sometimes the word *body* is used alone; sometimes both the words; the threat refers to the children, "you will suffer for it if you do it." *Mit Leib und Leben* is an expression that refers to him that makes it, to the person speaking, if there is a threat in it, it falls upon him that speaks.

Q. Are these words in the German idiom, used in a lawful or unlawful sense?

A. I take it in a lawful sense, and to explain myself, as I stand here before God, some of the Germans look upon themselves as a persecuted church, an *ecclesia pressa*; they are afraid if the English language be introduced, the German language would very soon be extinguished; to prevent this, they will defend it *with body and life*, they rather will loose their bodies and lives, they look upon it in a religious light.

Q. Is this a common phrase used in your hymns and prayers?

A. Here and there it is to be found. For example from the hymn book, page 454, hymn 530, verse 9th, "let it cost body or life, goods, blood, all what you have; let not that make you uneasy, Jesus will give it back to thee again, when that great day appears; he is thy confidence and trust."

INGERSOLL. Read what precedes where you began.

"When the tongue can speak no more, when the eyes can see no more, and your hearing will cease too, and when the heart is broken, keep true to your duty, Jesus is your confidence."

Q. Is there any prayer in which it is used?

A. I cannot remember just now.

Q. Is it not frequently introduced into your conversations to imply resolution?

A. Generally, but it has always reference to the person that makes use of the expression.

Cross examined.

Q. Have you not translated the catechism for the purpose of instructing the youth of the congregation in it?

A. I never had a hand in that. I instructed them in it about ten or eleven years ago. I cannot tell who is the translator of it; I believe Mr. Endres made a translation of it.

Q. Have you or any other minister of that congregation administered an oath to any of the congregation, that they shall support the German language in preference to any other?

A. No sir, never.

Q. In what language was the service performed at the laying of the corner stone of the church?

A. There was German and English preaching at the foundation of Zion church; I was not here when the St. Michael's church was founded. It is as much as I can remember, I believe it was Doct. Peters who preached; it was not when the stone was laid, but at the consecration; I was not there when the stone was laid.

Q. Were you at Lancaster when the German church was consecrated?

A. No sir.

Q. Were you present at the consecration of the Roman?

A. Yes sir; I do not remember whether the sermon was preached in English.

Q. Is not that the catechism in which you instructed the youth

of the congregation? (*Shewing him Martin Luther's shorter English catechism.*)

A. I do not know whether it was this edition; it is the same in substance.

Q. Have you not frequently heard English preaching in Zion church?

A. No sir, not frequently, I do not know that I ever heard it, exceptance, before this dispute arose about English preaching, Mr. Muhlenberg, (now in Reading,) preached an English sermon there—I do not remember any English preaching since.

Q. Is that a correct extract, to the best of your knowledge, from Luther's works? (*Vide appendix.*)

A. It may be a true extract, but I am not sure of it, I never examined.

Q. Do you remember advising some of the members favorable to the English preaching, not to meet, in consequence of the large number in opposition to it, that were to meet; or in consequence of letters you had received on the subject?

A. It may be possible, I do not recollect.

Q. Have you received letters on the subject?

A. It may be, but I do not remember it.

Q. What at a former period of time, twenty or thirty years ago, were the usual number of confirmations in that church? (*The defendant's counsel objected to an answer being given, and the court overruled the question.*)

Q. Do you know whether a part of the church property has been sold to Mr. Lexley at any time?

An objection was made to this question also, but the court thought, that as it had been said, that they could not part with any of the church property, it would be proper in the prosecution to shew that they had done so, and that the friends of English preaching asked them to do no more than they had before done. The court thought it would not be proper to say any thing that would affect Lexley's title, but that there could be no objection to the general question if they had sold property,

The defendant's counsel desired the judge to note the point.

A. I know nothing about it, I do not remember any thing of it.

DOCT. COLIN, called.—(*The witness translated the same paragraph which had been translated by Varin.*) “We will support you with our bodies and lives,” literally; but in English it is *with our life*; there is no occasion of mentioning *bodies*, because if we mention *bodies*, our lives would go of course.

Q. Do the words imply any thing unlawful in themselves?

A. No, not at all; I shall tell my idea; it is the very same as the strong animated expressions which we often find in political bodies, in parliament or in our congress; it signifies this, that we will defend our good cause with our life if it be necessary. My opinion is, that it never could relate to the present affray that happened. It is an expression very general among all people, religious and political; it signifies that they would if necessary sup-

port their opinion, the good cause, or that they think good, with their bodies and lives.

Q. What is the sense in which these words would strike you?

A. My idea is, that if a persecution would happen, they would suffer any thing, they would defend it with their lives.

Q. Do they import that they would risk every thing rather than the circumstance should take place?

A. I cannot tell exactly what they meant, but in their *zeal*, it is, that they would defend it with their lives; that is, a defence in case they should be called upon; a general expression, it is, of what they would suffer and do.

Q. Is it not a common phrase used among the Germans to signify sincerity and resolution?

A. Yes sir, it is always used for that purpose upon all important occasions.

Q. Does it admit, upon fair and just construction of an interpretation in an innocent and lawful sense?

A. Undoubtedly; because it may happen that they shall be called upon to defend their religion, their rights, they may be very mild, but willing to fight if necessary.

Q. Have you read the whole of this petition?

A. No sir.

Q. Read the whole of that paragraph and say whether there is any thing in it, to shew a determination to oppose the corporation by unlawful means?

A. (*The witness having read it,*) no.—(*Doct. Colin then read the 3d paragraph.*) “We declare shortly or briefly, by this opportunity, and we declare to an experienced corporation, that we are resolved, and we do now before God solemnly say, that we are resolved with our lives to defend our divine worship, as we solemnly covenanted with each other before God, to defend with our lives our German divine worship against all aggressions and with all our powers to oppose the introduction of any foreign language in our temples.”

Q. Do you attach any meaning to the words in that paragraph, different from that of the other?

A. I do not see any difference.

Q. What did you mean by saying, that these expressions pledged them to no unlawful enterprise?

A. I can't for my part say, they intended violence.

Q. What did you mean by that answer?

A. I cannot infer from this that they intended violence.

Q. Did you mean to say, that they did not pledge themselves to any unlawful enterprise?

A. I cannot say they intended an unlawful enterprise.

Q. Under the oath you have taken, you have said, this paper did not pledge them to an unlawful enterprise?

A. I can say only my opinion.

YEATES, JUDGE. I understand you, that the words in themselves, may admit of a fair interpretation; that it does not pledge

them to an unlawful enterprise; but may it not be taken, that they would defend themselves with violence.

A. Yes sir, it may be taken in that sense.

Q. May they not be fairly construed to imply, that at all hazards they would defend their system.

A. It may admit of that meaning, but my meaning is this;—that by a strong assertion, they say, “they would defend their worship with their lives;” but I cannot say, they would act with violence, or go to fight; I could not with a fair conscience say, they intended any violence at all.

Q. According to your ideas of the idiom of the German language, are not the words there susceptible of a fair construction, that at all hazards, they would carry their system into execution?

A. Yes, that they would venture their lives; it does not say in what particular case, they would do it; it has been remarked that in America, by Europeans, they are accustomed to use strong language in their public addresses; that is strong animated language. Doct. Wrangle, a very popular man, but had his humors; it happened one time, a part of the congregation disagreed; he was called home and very highly promoted. He shewed a petition, I saw myself, in which they extolled him very highly, and they said, “they would defend him with their life and blood.”

Cross examined.

Q. Where were you educated?

A. At Upsal, a university in Sweden.

Q. What has particularly qualified you to be an interpreter of the German language?

A. In Sweden, the German language has been long cultivated, and it was customary when I was a boy, for young gentlemen to learn the language; it was customary for our mechanics to travel about. I was eight years old when I first read the German language. It is so near my own language, I could read it before I was grown up, in prose. I have about three hundred volumes of the German books in my library.

Re-examined.

Q. Taking up that petition which has been shewn to you, would you upon perusing it, conclude, it was their determination to use violent measures?

A. I cannot say so, because I could not see into men's hearts; the writing does not imply it; from the writing it could not be inferred.

ADAM G. HARRIS, sworn.

J. R. INGERSOLL—Dreer, in the course of his examination, stated that he had never said to Mr. Harris, or that any thing of the sort had ever been said in his presence; that it was fortunate that the members of the English side had escaped with their lives; he denied, that he had ever said any thing of the kind; I call Mr. Harris to prove, that Dreer did say it in his presence.

Witness. At a meeting at the vestry room between the 24th and the last of November, I was noticed to attend a meeting of the vestry; after the petitions were read, a dispute arose between the

members to reject it, that it should not be acted upon; the question was taken and was carried that this petition should be acted upon; there were three or four of the gentlemen spoke all at once so that one confused the other. I then told the president, it was quite improper to have such a confusion in the corporation; it was out of order; he answered me, "I should put them to order;" I then told him, he was the president of the corporation, it was a thing did not belong to me. Then one Mr. Yaeger stated, by speaking through one another, a person could hardly make out who was telling his story—Yaeger said, "that some of them had been going about to persuade the members to join them to get English preaching." Then Mr. Dreer said, "they may thank God, they saved their lives in the school house," out loud. I then told Dreer, that he must possess a great power to do so; Mr. Dreer replied, "that he could not do it, but there was enough would done it, if they had not been prevented." I told Dreer, I did not think he was a competent member to belong to such a body, to come there and make a riot; I did not think it was a proper place for it; I did not come there to make a disturbance with any body; and it was moved and seconded, the corporation should break up. The Revd. Dr. Helmuth got hold of my hand, as much as to make me make up with Dreer, but I did not think the thing of consequence then, I went out.

Cross examined.

Q. When were you subpoenaed to attend here to give evidence?

A. I have not received any notice, Mr. Witman told me last night, I should attend here this morning.

Q. Did you talk with Witman about this evidence?

A. No sir, I have not talked ten words to Witman since New-year.

Q. How did he know you were a witness to this circumstance?

A. He was a member of the corporation at that time.

Q. Have you had any conversation with any of the members of the corporation about what took place since the election?

A. No sir, I did not trouble myself about it.

Q. Have you contributed any thing towards carrying on this prosecution?

A. No sir.

Q. Have you ever been asked to contribute?

A. No sir.

Q. Do you know any members of the congregation that have contributed?

A. No sir, I do not.

Q. What induced you to speak to Dreer?

A. He was in a violent passion, and I thought it was not a proper place.

Q. Did you continue there till the corporation broke up?

A. Yes sir.

Q. Did they break up in good order?

A. Yes sir.

Q. Was your knowledge of this matter taken down in writing by any body?

A. No sir, not that I know of.

Q. When Witman told you it was necessary you should be here to-day, did he not state why you should be here?

A. No sir, he did not.

Q. Did he tell you, it was to give evidence?

A. No sir.

Re-examined.

Q. Were you not at the meeting at the school house, Dreer spoke of?

A. Yes sir; I heard them make a little noise, I stept out; because it is not my practice to interfere in any noise; I saw Smith and Macklie. *(The defendant's counsel objected to the witness proceeding to state what took place at the meeting, because it was not to repel and ought to have been offered with the other evidence. The prosecution argued, that the evidence was admissible to prove that the meeting was not quiet and peaceable as declared in the testimony of the defendants. The court did not think it regular for the witness to go over the same ground they had given before.)*

JOHN BIRNBAUM, sworn.—It was in the latter end of September, the vestry met; I was, at the same time, a member of the vestry; it happened there were two petitions went into the corporation, one from a party of the congregation to introduce the English preaching, the other was not to introduce it; a little dispute took place upon the petitions, one was speaking here and one there; Dreer was sitting alongside Mr. Harris and I was sitting near Harris, Dreer said, "we may thank God we had saved our lives in the school house;" he mentioned nobody in particular—Mr. Harris told him, "he must be a very powerful man:" Dreer answered, "he would not do it, there was enough beside him that could do it." Mr. Geyer was at the same time a member of the corporation, he said to Mr. Dreer, "Mr. Dreer it would be your duty to inform of such people"—I could not say what answer Dreer gave to Mr. Geyer.

Q. You heard these words distinctly?

A. Yes sir.

Cross examined.

Q. Did not warm words pass between Harris and Dreer?

A. I cannot say what they were, they had some words between them, I did not take notice of them.

HORACE BINNEY, Esq. *for the prosecution.*

May it please your honor. I offer you, gentlemen of the jury, my sincere congratulations upon arriving at the present stage of this cause. Whatever may be its fate hereafter, the patience with which you have listened to an examination, unexampled in its duration and latitude, is entitled to the thanks of every one; whatever may be the verdict you pronounce, the defendants particular-

ly must feel that it has been preceded by an investigation singularly liberal and extensive. Every fact, which they thought material to their defence, every opinion which friends or adherents have formed in their favor, their witnesses have been examined and re-examined to declare to you; till the mind cannot possibly resist the conclusion, that they have placed their whole case before the country, in its best form, and that in being judged by this case, they are judged by themselves. It is upon a view then of the whole ground, that I conceive a verdict of conviction will accord with perfect justice, and that a salutary lesson may be conveyed to society through the judgment of the law upon the particular guilt of the defendants.

It has been repeatedly insinuated that this prosecution owes its birth to personal resentment, and to the desire of wresting from the Germans a portion of their property by the terror of the law. Gentlemen, the prosecutors indignantly deny it. Personal hostility to the defendants they have none. Most of the defendants are volunteers in the cause; they have importunately pushed themselves into the bar, that they might participate in the triumph of victory. The prosecutors cannot be charged with resentment against this portion of the defendants. As to the residue, they are arraigned before the public, not because they have refused the benefit of religious instruction to the prosecutors and their children, great as this outrage is, but because they have combined to interrupt the enjoyment of private opinion, and to support their own absurd prejudices by menaces, by assaults, and by violence. They well know, gentlemen, that the influence of reason, of mild and brotherly counsel, must sooner or later be fatal to their fanatical proscription of the English language in their churches; they determined therefore to drown the voice of reason in their tumult, to proscribe all the charities of brother and of friend in the contest, and to gain by combination a momentum in their career that nothing could resist. They not only used force and violence, but they combined and conspired to use any degree of it that should be necessary to exclude the English from their churches, however just or general the wish for instruction in that language might be. This is their offence, and it is to restore the prosecutors to the right of private opinion and to the right of peaceably advocating and propagating their opinions in the church, that they have instituted the prosecution. It is to gain no new advantage; it is to punish aggression upon a long established and unquestionable right.

The indictment, gentlemen, contains two charges or counts: the first states the conspiracy as it is recorded in the German paper, and that in pursuance of such conspiracy the defendants committed the various assaults, batteries and riots, which attended the election. The second charges the conspiring only: whether the defendants were or were not parties in the election riot, and whether that riot was or was not a fruit of the conspiracy, still if they combined and conspired as is stated in the second count, they are guilty. Conspiracy, as you will perceive, is an indictable offence

though it be followed by no overt act. If the conspiracy produced the riot, they are guilty upon both counts, and the court in their sentence will notice this aggravation of the offence.

The law, gentlemen, looks with peculiar ill will at the offence of which the defendants are indicted. It is an offence so inveterately proscribed, that the will is considered quite as bad as the deed. While man remains opposed to man, opinion to opinion, there is too little in the excess of power of one over the other to render oppression or persecution probable. The law considers the community safe, if it punishes merely the excesses themselves, the acts. But when bodies of men combine to carry into effect their designs, the moral influence of combination is such, that it frequently achieves its designs without acting. The law therefore in every case where the combination is calculated to prejudice the rights or interests of third persons, punishes the conspiracy itself. This was the law as it was held by one of the present counsels of the defendants, while recorder of the city, in the case of the journeymen shoemakers, where a number of men were indicted and punished for combining to raise their wages. Upon the same principle the brewers of London were indicted and convicted for combining not to brew small beer. In each case the conspiracy or combination was held to be the offence, without reference to any overt act.

I lay it then down to you gentlemen, as the only principle of law which it will be necessary for you to advert to in reference to this indictment, that all combinations to carry into effect an unlawful design, or even a lawful design by unlawful means, are indictable without any overt act whatever; and there probably has never been a country in which law had the semblance of science, where this doctrine was not espoused as essential to the public peace. It has the warrant of several authorities to which I will now refer his honor.

Hawkins, an unquestionable authority in criminal law, says, "there can be no doubt but that all confederacies whatsoever wrongfully to prejudice a third person, are highly criminal at common law, as when divers persons confederate together by indirect means to impoverish a third person, or to maintain one another in any matter whether he be true or false." Hawk. P. C. bk. 1. c. 72. Sect. 2.

"A bare conspiracy to do a lawful act to an unlawful intent is a crime, though no act is done in consequence thereof." 8. Mod. 321.

"All conspiracies are illegal, although the subject matter of them may be lawful." Rex v. journeymen tailors of Cambridge. 8. Mod. 11.

"An indictment lies wherever either the conspiracy is entered into for a corrupt or illegal purpose, or for the use of unlawful means to effect a lawful purpose, although such purpose be not effected." 1. East Cr. law. 462.

"Conspiracy is the gist of the charge, and to do a thing lawful

in itself by conspiracy is unlawful." Rex v. Eccles. Hawk. bk. 1. c. 72. Sect. 3. note.

I could place many other authorities upon the notes of his Honor; but they are abundantly sufficient for my purpose. Whatever be the difficulties of this case, they are not in the law that is to govern it; if the facts laid in the indictment are proved, the defendants are clearly guilty of a conspiracy; their counsel will not deny it. I however claim for the prosecution the benefit of another principle, in addition to those which I have already supported by authority, and the use of which must also be as readily conceded to me. It is this, that where conspiracy or confederacy is proved, the acts and declarations of any member in reference to its objects and operations are evidence against the whole body; so that if after proving a combination among the defendants, there should remain any doubt as to their precise object, we shall be entitled to urge against all, the language and the acts of any one conspirator, and to call upon you to say, that the object was in truth and reality what this language and conduct shew it was. The cases are all cited in *Mc.Nally's evidence* 611, where the law will be found to be as I state it.

Thus stands the law, gentlemen; its application to the facts constitutes the business of the case; and although the case is unusually full, and the witnesses at times in apparent contradiction with each other, I trust the prosecution will have no difficulty in so making the application as clearly to prove the guilt of the defendants.

Permit me, gentlemen of the jury, to give you a brief history of the churches which have been the scene of this disgraceful schism—you will the better understand the nature and the merits of this conspiracy.

Prior to the year 1765, a number of respectable men, some of them natives of Germany, and others, natives of this country, the descendants of Germans, united to erect a building for public worship, in conformity with the doctrines of the Great Reformer. The fruit of their union was a building still extant among us, remarkable for its venerable and antiquated structure. In this church they preached the German language, not in consequence of any article of religious faith, or of any private agreement among them, but as a matter of present convenience and expediency. To many, this language was vernacular, it was understood by all. Having increased in number and respectability, they addressed themselves in 1765 to the proprietaries of Pennsylvania for an act of incorporation; and they were accordingly incorporated with liberty to build another church. The church, now called Zion's, was erected under this charter, and in these two churches, the society continued for several years to flourish. Toward the close of the revolutionary war this body again addressed itself to the notice of government, to obtain a confirmation of its corporate privileges; and in the year 1780, the commonwealth renewed and amended their charter, and gave them the liberty of erecting a third church.

This liberty was no doubt solicited and granted in consequence of the increase of the church; and there is no difficulty in crediting such an increase even under the impediment of a foreign language, when we advert to the fact, that at that day the founders of the church, natives of Germany, still continued to mix with their descendants in attendance upon its ordinances. The language was still known to all the members. But the history of this last privilege, is the history of the decay of this church, and of the cause that produced it. A congregation as respectable for its wealth as the German Lutherans, as stationary as that body of men has generally been in this city, would by its natural increase alone, unaided by emigrations from Germany, have called for the erection of a third church, had not some pestilent influence kept down its growth, or compelled it into some other direction. A third church was never built nor called for. For some time the cause was not perceived. By many even the effect was overlooked, and the few by whom it was noticed referred it, not to its true cause, but to that occasional decay of religion which is seen in every church, and which in most churches is effectually compensated by occasional revivals. To the German Lutherans came no such compensation. The body contained within itself the seeds of incurable decay; the sources of nourishment were dried up; the word of God was preached in an unknown tongue; "the hungry flock looked up, but were not fed." In the year 1800 the evil addressed itself irresistibly to the conscience of almost every father and mother in the church. A period of thirty-five years had elapsed since the first charter. Those who had obtained that charter, had now dropt into the grave, their children had become parents: the language of the country had made inroads into every family among them; it was impossible to exclude it, and as impossible to prevent it from excluding the German. The children of the congregation therefore deserted the church; no other was open to them. The descendants of the founders grew up in ignorance of their duty, through the very influence of that church that was erected to teach it to them; and the church confined its instructions to foreigners, emigrants from Germany, who had been but a day among us, and who by obstinately maintaining the German language in the pulpit, drove the Americans from the church, or compelled them to yield a hypocritical attention to what they could not understand.

I ask you, gentlemen, whether here was not ample cause for the fermentation which commenced in that church in 1800, and continued to the separation in 1807. The evil was not to be endured. With every conscientious man among them it was a question of life or death. They were themselves partly uninstructed, their children wholly so. Two churches belonged to the congregation, and its affluence could easily have afforded a third. The friends of the German language could not fill one. Their brethren asked, that one of the churches might be assigned to them; it was refused: that there might be service in both churches alternately in German and in English; it was refused; that they might have assistance

from the corporate funds to build a church for themselves; it was refused. They were reviled, slandered, persecuted. Their views were pronounced to be venal, not religious—they wanted, it was said, not instruction but money; nor did this base outcry cease until they finally gave the lie to their accusers, and followed the direction of their conscience, by erecting with their own unaided means the church now called St. Johns.

This secession in 1807, carried from St. Michael's and Zion's churches a large majority of those who wished for instruction in English. To those who remained behind, and who were not bigotedly devoted to German, the evil of German preaching either did not appear, or was not, so alarming. It had not yet arrived to its greatest pressure in their particular case: they were willing to give it a further experiment, and they gave it without prejudice or animosity. The event of this prosecution shews in what the experiment has resulted; it shews beyond all question, that the exclusion of the English language from that church is so irrational, so irreligious, so fatal to the well-being and harmony of that society, that nothing but menaces of force and violence can bring it about; that nothing but conspiracy can bind the enemies of this language together, and that if reason is left to her own proper and legitimate influence, the overthrow of this abominable fanaticism is inevitable.

Let me now state to those Germans, who are listening to this brief history of their society, what this history has made prophecy for all future times, that with the revolution of every fifteen or twenty years, so long as this bigoted exclusion of the English service shall endure, those who at the beginning are the enemies of English, will at the end of the period become its repentant friends. I ask those who know the nature of man, is it possible in the centre of an American community to rear children to the use and perfect understanding of the German language. Instances there may be, the diligence of some parents may do much, and the docility of some children may do more; but I speak of children in general. There is no doubt it cannot be. How then are Zion's and St. Michael's to be recruited? How is the church to be maintained in even its original strength? Not by streams from the native fountain, the well of pure and refreshing waters, but by the turbid current that is rolled to this country by the discontents and restlessness of Europe. The church must depend upon emigration. The emigrant must supplant the native; and when he has been long enough in the country to rear an American family, that family must be rejected by the church to make room for a fresh importation of strangers and aliens. What the cause of the prosecutors is to-day, will therefore twenty years hence be the cause of these defendants; their cause against some more recent swarm of emigrants, who, after experience has operated upon parental affection to turn these defendants from the error of their opinion, will conspire to rivet upon their children the same pernicious rule, which they have conspired to rivet upon the prosecutors. This course is

so natural, so certain, and yet so abhorrent to the feelings of every one, that if no other consideration could lead to the occasional use of the English language, in the churches, this would do it. Reason has nothing to offer against it: reason could never prevail against it—it was therefore necessary for the defendants to resort, not to reason, but to menaces and violence.

Gentlemen of the jury, it has been said, that it is an article of faith with these people to adhere exclusively to the German, in their religious exercises; that they are conscientiously opposed to the English language. It is dishonoring conscience to attribute to her any agency in this absurd and senseless prejudice. Is religion in any instance, or with any sect, identified with language? Will these people say, that the author of this religion, when he commanded his apostles, "go teach all nations," gave countenance to their opinion? Can they look for justification to a religion, whose most splendid miracle was the gift of tongues? Can they find any support in the practice or sentiments of Luther, who availed himself of the universal Latin language to propagate a reformation for which his own German idiom was too narrow? Is there any help for them in the confession of Augsburg? Gentlemen, this cant, about faith and conscience in a practice that seems to trample upon both, gives a deeper tinge to the offence that it seeks to palliate.

Further, it is said, that they are by their fundamental articles, by their charters, by all their church records, a *German* Lutheran congregation, and that they have no authority to tolerate another language. This argument, his Honor will inform you, if necessary, proves far too much, and therefore proves nothing. It proves that this church against the unanimous wish of its members is bound to retain the German, that it is a condition upon which they hold their franchise, and that if the time shall come when not a vestige of the German language remains among the people, they must forfeit their charter, or employ that language in the church. This is indeed going too far. The fact is, gentlemen, that you never meet this phrase in the charter or elsewhere except as the description of the body, the *name* and *title* of the corporation: it in no respect restricts them as to the language of their church, nor even as to the descent of their members—they may be descendants of Frenchmen as well as of Germans. The precise point has been decided by the supreme court in a case perfectly analagous. A Roman church of this city is incorporated by the name of the "Religious society of *German* Roman Catholics of the church called the Holy Trinity." The enacting clause repeats the title, and confers the privileges of a corporation. The officers of a church election in one instance rejected the votes of all but Germans and the descendants of Germans, and in consequence, particular candidates were returned as duly elected; whereas the votes of Americans, and of Frenchmen, in other respects duly qualified, would have turned the election the other way. The court after argument, made the rule absolute for an information against the officers who were returned as elected, holding it too clear for a moment's doubt,

that the word German was part of the title of the corporation; and not of the qualification of the members.

There being then gentlemen, neither faith, nor reason, nor law against the use of English in these churches, the friends of it in the autumn of 1815, thought proper to confer with each other at a public meeting. The congregation is proprietor of two school rooms, in one of which the friends of German usually met to promote their views. In the use of this they were left undisturbed, and that the friends of English might be equally so, they convened in the other. The object of the meeting was known to Mr. Fricke and Mr. Hoeckley, two of the defendants, who with others of their party were invited to attend. It was stated also to Dr. Helmuth, their clergyman. No opposition was made to it, and none rationally could be. A form of notice was devised and printed to invite the attendance of the candid and intelligent men of the church. The meeting took effect, and notwithstanding the disturbance excited at it, a committee was appointed, who stated their wishes in a letter to the vestry. This letter is the head and front of our offending: Nothing else has been done by the friends of English preaching; and therefore I beg your particular attention to it, that you may hereafter compare it with a different paper from a different body. (*Reads the English letter for which vide appendix.*)

I ask you gentlemen with perfect confidence, whether it was possible to pen a letter more conciliatory, more peaceful, more perfectly in unison with the religious professions of these people, there can be one answer. On the other hand what was the course pursued by the defendants? It was said until the evidence triumphantly put down the assertion, that the prosecutors were the aggressors, and that the steps taken by the defendants were intended only to meet what was thus begun by the prosecutors. It now appears that before the meeting was called at which the committee was appointed to draft that letter, these defendants knowing, that a meeting was in agitation, determined to prevent its influence by the combinations for which they are indicted. They held a previous meeting; they there entered into their solemn league and covenant; they recruited their forces, and on the evening on which the peaceful communication of the prosecutors was presented to the vestry, the address of their opponents with its numerous signatures was found already in possession of the table. The object was to meet the first step of the prosecutors by menaces of violence, and by the same means to deter the vestry from yielding the slightest attention to the petition that was preferred to them. The defendants had bound themselves to each other to prevent even by the sacrifice of life, the introduction of English into their churches, and they boldly proclaimed their conspiracy in order, that the sacrifice might be made unnecessary by the threat. Now gentlemen, let me call your attention to the German paper. Its translation is as follows: (*reads the German paper, for which vide appendix.*)

I defy any plain unlettered man to read that paper and to hesi-

tate a moment about its meaning. The covenanters announce to the vestry, "that they had determined and firmly bound themselves before God, and solemnly to each other, to defend *with their bodies and lives* their German divine worship from every attack, and to oppose with all their power the introduction of a strange language into their churches." They pray, that the question as to English preaching may *never be put to vote*, that English may not be spoken in the vestry room, that the friends of English may not be permitted to meet in the school room, and they concluded by declaring, that they will with all their powers, *yea, with body and life*, support the corporation in all such measures as may tend to the welfare, advancement and perfecting of the German divine worship.

Try this paper by any rule of criticism that will not outrage common sense, and it will be found to be neither more nor less than a covenant to prevent English by force and violence, or in the language of the indictment by all means lawful and unlawful. It declares with the utmost emphasis, that they have combined to prevent it, and by the plainest inference to prevent even a vote upon it, by their bodies and lives; and among plain men these plain words have no other meaning, than resistance to death against the introduction of English, even through the medium of a legitimate election.

But this simple and obvious interpretation it seems is unsound; and one of the desperate efforts of the defence, has been to urge upon you and the court the adoption of another.

It is said, that the words *Leib und Leben* are a figurative expression, indicating nothing but a sincere and ardent attachment. My answer is, that the signers of the paper are not poets or rhetoricians, but very plain and some of them very vulgar men. I doubt whether many of them would comprehend the meaning of this part of their defence.

The principal support of this construction is Mr. Varin, a professor of the German language, whose opinion I should be more willing to take if he was not at the same time professor of a very ardent attachment to the leading defendant. This gentleman expounds words to mean merely a *sincere, kind attachment*, nothing more. Being asked if to defend *mit Leib und Leben* means lawful defence, he answers yes, *always a lawful defence*. Now it is clear, that one part of his interpretation destroys the other—that if the phrase means *any* defence, it does not mean merely a sincere kind attachment; but it is still clearer, that if it means defence, it depends not upon the words, but upon the context or the object, whether it be a *lawful* defence; so that this good gentleman has after all been giving us his opinion of the paper, not his translation of the words.

The venerable Dr. Helmuth is also brought to sustain this fanciful interpretation, and with still less effect than Mr. Varin. He supposed the phrase *mit Leib und Leben*, to be harmless, because the threat fell upon the party who used the words; had it been *bey*

Leib und Leben, it would have been worse, because the threat would have been upon the party addressed. But is it not clear that if I threaten the sacrifice of my own life before I permit a thing to be done, I mean to carry resistance to the extremity of death, against all who oppose me? But Dr. Helmuth speaks most plainly in behalf of the prosecution. He says, the Germans consider themselves as an *ecclesia pressa*, and they mean that they will rather loose their bodies and lives than their German. Was a combination, pledging them to this, lawful?

Dr. Collin speaks to the same effect. It is the amiable error of these gentlemen to suppose the defendants free from intentional fault, and then to interpret the phrase accordingly. It is the duty of the court and jury to ascertain whether they are free from intentional fault by the fair interpretation of the words as they stand.

But, gentlemen of the jury, if there be any thing ambiguous in the words of this paper, you have from the defendants an interpretation that is perfectly decisive, an interpretation by their actions and language, which from the commencement to the close of this disgraceful conspiracy, speak one unwarying purpose of violence.

Mannhardt was the author of this paper, it was presented to the vestry in his own hand writing, he of all the subscribers best knew its object, he best knew whether in its composition he had indulged the fancy of a poet, as is now imputed to him. Gentlemen, this man instead of being satisfied that his work should be diluted or emasculated as his counsels now wish it to be, declared, that it meant blood and nothing but blood, and both he and his followers acted up to the full malignity of this declaration, until the consummation of their purpose at the election. It was at the meeting in the Northern Liberties, after this paper had been written, that Mannhardt told his friends, they must oppose the friends of English preaching by their *bodily strength*. On the evening it was presented to the vestry, this same Mannhardt solicited Uhler to attend that body, and declared to him, that not half an inch must be given, otherwise *blood must flow*. As early as the spring of 1815, he had digested his plan. There were in the corporation friends to English preaching; their intention he said was to introduce it, but they "shall not succeed, those traitors. Before that happens, *blood shall flow*." Eberle expressed his horror at this ferocity, but the wrath of Mannhardt was not to be appeased. "Yes," was his emphatic answer, "*blood flows*."

This savage language of the leader became the countersign of his party. They were not merely imbued with his spirit, but they swore in his words. Dorneck told Busch, before English should be preached, blood should flow in the churches. Many would sacrifice their lives, and do as had been done in London, resort to open violence in the church. It was Flegler's language to Cope, "*blood shall flow*, before you shall have your ends answered."

It was not only by these, but by equivalent words, that they shewed the most distinct apprehension of the nature and objects of their covenant. It was Almendinger who with his double fist ap-

proached Mr. Krebs while officiating as president of a charitable society, and trembling with rage, exclaimed, "at the next election Mr. president, at the next election;" and Christian Schmidt whose presence always was the signal of disorder, supported his comrade and explained his meaning by a most felicitous reference to the scriptures. "Mr. president, if we can't gain the next election by fair means, we will follow the command of our Saviour and smite with the sword."

Can any one, after this language, gravely endeavor to argue away the natural meaning of this German paper? Can the counsel entertain the slightest hope of success for their interpretation, when their clients have thus as it were anticipated and rejected it?

But, gentlemen of the jury, it does not rest here. It is not merely from the *lips* of those men that we ascertain the character of their conspiracy. Their acts interpret still more effectually for the prosecution; and I say it with a full assurance of your assent, that from the time the covenant was made down to the day of the election, these acts were acts of violence, sometimes *brutal*, often subversive of the public peace, and always shewing that they considered their bodies and lives as literally in pawn for the defeat of their opponents.

Need I gentlemen, recall these acts to your recollection—the determined obstruction of every meeting at which the prosecutors assembled, the malignant attack upon Burkhardt by Schmidt—the blows by which Mackie rewarded Burkhardt's attempt at pacification, and the disgraceful outrages of the election day. It is true that Dreer, and Beeler and others, signers of the paper, but not included in the indictment, have sworn, that they were present at these meetings and at this election, and that there was no disorder. As to Dreer, since the testimony of Harris, his credit is gone, he is unworthy of the least belief; and as to Beeler and the others, after the precise, minute, and corroborated evidence of riot from a score of witnesses for the commonwealth, we have no alternative but either to impute wilful falsehood to Beeler and his associates, or to suppose that disorder and tumult are so much their natural element, that they do not perceive it where it exists, any more than we do the air we breathe. (*Mr. Binney then went through a minute examination of the evidence, after which he thus continued.*)

The counsel of the defendants will never put their case upon the denial of tumult and disorder. It is clear from the whole current of their inquiries, that they conceive it a hopeless effort, and that they place their principal reliance upon an attempt to fix the origin of that tumult upon one or two of the prosecutors. I trust gentlemen you will think this equally desperate; and after urging a few observations to his Honor and to you upon this branch of the case, I shall leave it with you.

The allegation of the opening counsel for the defence, was, that the whole disturbance was the consequence of, and therefore attributable to Mr. Witman's illegal motion for the appointment of judges. I deny that this was any other than a legal and constitu-

tional motion; and whatever was its character, I equally deny that it was the cause of the disturbance.

The right of Mr. Witman to make the motion, is denied upon the authority of a bye-law which vested the power of appointment in the president of the vestry. To this I answer in the first place, that no such bye-law has been proved. The defendants have been emphatically called upon to prove it, and have failed. In the place of proof, they read a paragraph from their book of minutes, which does not appear to have been adopted at all as a bye-law, and still less has it been adopted in the manner required by the charter. It is confidently asserted that no such bye-law exists. But a more decisive answer is this, that if the bye-law were proved in fact, it is bad in law, because it exceeded the authority of the body that made it, and for this I refer myself to the judgment of his Honor.

I crave the permission of the court to state my reasons for this position; the question is interesting to corporations in general, and particularly to this one, it cannot receive too deliberate an examination.

The right of electing the officers of this corporation is beyond all dispute vested in the members of the congregation at large, and not in any particular part of it. The power of appointing inspectors, judges and clerks of this general election, is incidental and necessary to the execution of the principal power. It is of the first necessity; an election cannot proceed without it. It is a power in fact to control the election, and it is therefore *indispensably connected* with the power of election. It is peculiarly so in such an election as this, where the inspectors are not sworn, have no superior, and receive or reject votes at their discretion. It follows, that as the grant of the principal power always implies the grant of such powers as are incidental or necessary to its execution, this power of choosing inspectors is contained by implication in the grant of the principal power. Now where a power is given impliedly, it is the same in its vigor and effect, as if it had been given in express terms. The law knows no difference. Then as this congregation has by implication the power of appointing inspectors, they have it in the same vigor, to the same effect, and as free from control, as if they had it by express grant. They accordingly exercised it without dispute for forty-seven years; and if this corporation could not have taken it away, had there been an express grant of the power, so neither can they take it away, there being a grant by implication. In fact the power may be said to be expressly granted, because the incident passes with the principal which is expressly granted.

Then I submit to your Honor, that the power of electing inspectors being given to the congregation at large, it is not competent to any body but the legislature to take it away and vest it in a smaller number, the corporation or the president of the corporation. And this is a settled principle, that whenever a charter gives the right of election to the whole body, a part of that body, or a distinct body cannot abridge it, or limit the exercise of it to a smaller number. It

is contrary to the end of the charter, which is that the whole should regulate it or vote. It is putting a control in other hands, in derogation of the rights of the congregation at large. A power in the corporation to make bye-laws for the good government of the congregation, does not authorize it, because this power is limited by the power of election in the congregation; otherwise under pretence of good government, a new qualification might be required of voters. If the power to make bye-laws was in the congregation at large, they, it is true, might by a bye-law limit the exercise of their other powers; but this is a bye-law made by the creature to diminish or destroy the creative authority of the body that gave it existence, which, without express warrant in the charter cannot be. The king v. Cutbush 4 Burr. 2204 is a strong authority.

The motion of Mr. Witman was then, gentlemen of the jury, perfectly constitutional; it was made with perfect decorum, and under the sanction of the highest law officer of the state.

But, gentlemen, this motion whether legal or otherwise was not the *cause*, but the *pretext* of disturbance and riot. The elements of tumult had been previously so mixed and combined, as to be ready for instantaneous explosion. They waited but for a spark from that collision which they knew the ordinary incidents of election produce, and which they had pre-determined that this election should produce.

I pray you, gentlemen, to recollect that this was a church election, a ceremony generally and most properly influenced by the grave concerns with which it is connected. If from any election it is possible to exclude the turbulent passions of the heart, one would expect to see them excluded from the elections of a religious corporation. But in this instance, under the pledge of the original conspiracy, there was a regular organization to make turbulence counteract the operations of reason, and to drive the prosecutors from the poll. All the stimulants of an active political election were applied. Committees of vigilance, beer and wine, badges of distinction, hackney coachmen, all entered into this riotous and disgraceful scene; and what proves to demonstration that the plan of violence and intimidation had been previously digested, and was in no respect dependent upon Mr. Witman's motion, is the first incident of the day, when upon the approach of Mr. Lex to the bench of the vestry men, before the election began, he was repressed by the cry of, "kick out the rascal," and finally pulled back from the enclosure. For this no excuse or extenuation is offered. It was so shameful and unprovoked an outrage, that Dr. Helmuth instantly interfered with his own friends, and told them, Mr. Lex, as a vestry-man, had a right to go into the enclosure. To this hour no reason has been assigned for this insult, nor can any be, but the preconcert to drive all the friends of English from the poll.

It was not the motion of Mr. Witman then that caused the tumult. It was not the presence of peace officers, who in consequence of the previous threats of Schmidt and Almendinger, and the

subscriptions to the German paper, had been properly requested to attend by alderman Geyer.—It was the conspiracy, that with malice aforethought engendered the confusion, in order to reap the fruits of it. It was the conspiracy that perverted the motion of Mr. Witman into a cause of violence, because its tendency was to defeat that part of the confederacy which depended for its success upon partial judges. It was the conspiracy that held up Mr. Witman as subsequently the disturber of the judges and of the election, because he took a position from which he could note down the illegal votes received, and the good votes rejected. It was this that prompted Spiess to tell Mr. Cope, for fifty years a member of the church, that he had no right there, that he was Irish, that he ought to be kicked out. It was this, that impelled Schwartz to threaten Cope with personal injury as soon as the night should favor his designs. Finally gentlemen, without repeating to you every disgusting incident of the day, it was in execution of the conspiracy that Piper, in terms which almost congeal the blood, exclaimed to the same witness, with a view to drive him from the poll, “d—n your eyes, I have taken the sacrament three times, and have a better right to vote than you have.” How much better did this young blasphemer understand the pledge he had given to these defendants, than to that Being whose most solemn ordinance he thus dishonored and profaned.

Gentlemen, it is unnecessary for me to pursue this subject. The defendants I submit are one and all guilty of the offences in both counts of the indictment; and if they are so, it concerns the peace of this church and of this community, it concerns the interests of religion herself who is always wounded by the offences of her professors, that no tenderness for the reputation of these men, no false charity for their errors, shall prevent them from feeling the weight of your verdict, and the indignation of the law. I ask no other verdict than such as the evidence and the law call upon you to give.

MOSES LEVY, Esq. *for the defendants.*

WITH submission to your Honors—Gentlemen of the jury. It is my province to open on the part of the defendants, and to point out to you the facts, and the evidence of those persons, as appear to me calculated to take off that impression, which so strenuous an endeavor has been used to excite, on the part of the opposite counsel. I have listened with attention to an argument, *ingenious* in every part of it, and *strong* wherever the facts admitted it so to be; and in which every particle of testimony, that could be summoned up against the defendants in this case, the gentleman who made it, has industriously collected and pressed upon your attention. I shall not follow the example he has set, in telling you what may be my feelings, or what are my convictions or opinions upon the present occasion; it is of little consequence to you, gentlemen, what are the convictions or impressions of the counsel on either side; and it was with astonishment indeed, I heard from a gentleman, so generally correct, an observation that he spoke from his own conviction, when he said the defendants ought to be convicted. It shews plainly to us, that this is one of those cases, in which strong feelings are unavoidably excited; and that the counsel themselves cannot avoid participating in the feeling which operates so forcibly upon the surrounding crowd. Truly irrelevant is it to the subject, what is the conviction of that gentleman or myself. Upon his mind and upon mine, a variety of considerations operate, and ought to operate, which it is improper to state to you; in us it is allowable to feel a zeal for those with the defence of whose cases we are intrusted; it is natural for us to feel such a zeal, and when the gentleman said, he felt a conviction in his own mind that the defendants ought to be convicted, he only confirmed what I should suppose, that he entered with great zeal into the cause of his clients. My object will not be to shew *my* zeal leads me to a different conclusion; but after shewing that the convictions of both of us are to be thrown by you, out of your consideration of the question, I am to shew the more merits of the controversy. What, gentlemen, is the controversy? Is it a question to be now decided, whether it is better for the congregation of St. Michael's and Zion's churches, that preaching and praying in English is to be tolerated rather than in German? Is this the question you are to decide? If it were, it would be connected with a multitude of facts, necessary to be elucidated by a variety of persons; the first of these are not in evidence, and it would be impertinent in us now to institute the enquiry, whether it is better for the congregation, whether it is more likely to preserve within the pales of the church the youthful members of the congregation, if English worship be tolerated there. If this were the question, many of the arguments of the gentleman, would have a strong and proper bearing; they would be answered by a variety of arguments on our part, and you would be capable of judging on what

side the balance lay; and what the interest of religion required, would be your decision.

The opposite counsel has admitted, you are not to present to your minds such an enquiry. He admitted it one moment in terms, but ten minutes after, forgetting his admission, his arguments went to press and could only have application to the cause, if you were to enquire, whether it was better to have English worship in that church. For what other purpose have we been told a variety of facts respecting the ceceding of the youth, than to instil into your minds a strong prejudice in favor of that side in whose behalf this prosecution is carried on? Why are we told, that the congregation that built the church in 1765, were large enough to fill, before the year 1780, two churches; and yet since the year 1780, when the youth are brought up almost exclusively to the learning the English, an end is put to the increase of the congregation, and in 1780, after a period of thirty years has elapsed, no third church is built or is necessary? What is this argument for but to form in your minds a favorable prepossession in behalf of those who are favorable to English preaching? For what other purpose can it be pleaded? We are told, there has been a diminution in the number of baptisms and confirmations. If there is, what has it to do with the present controversy? Is there an effort to produce from this court, such a verdict as will increase the number of baptisms and conversions in this congregation? Is this the object of enquiry or proper for your determination? We are told also of the progress of the English language, which in time, it is said, will bear down all opposition, and the German members must in a few years give way to this prevalence, which no human hand can stop. If it be so, why do not the members of this congregation advocating the worship in English, content themselves with this steady and inevitable progress of the language, which in a little time would give them the power, it is the object of this prosecution to attain? If by the nature of things, if by reason of the tendency of the English language to force its way; if the circumstance of its being the language in which the business of the country is generally done, in which the laws are written; if these circumstances are to press open the door through which the English worship is to be introduced, why not calmly wait for this event which they have so much at heart? Why drag into courts of justice unnecessarily, men most respectable in private life? Why drag these heads of families into a criminal defence, who thought it their duty to maintain the German worship in these churches, if in a little time, their object could otherwise have been effected? Why were they not content with a certain victory, a bloodless victory, to which they need not contribute any thing, but which the nature of our government was slowly but certainly bringing about for them? No; instead of this, they are now attempting with a violent hand to force open that door, which their counsel asserts, will open of itself in the lapse of a few years more. This, I say, is not the object of the present controversy—totally irrelevant is it, and immaterial to us, whether

the congregation is to decrease or increase by the introduction of the English worship. Your observation is confined to a single point; has there been such a combination and confederacy, by all means lawful and unlawful to effect their own views, as merits from the laws of their country punishment, and will justify you in finding a verdict against these defendants.

The effect of these observations, so warmly and eloquently pressed upon you by the gentleman who preceded me, is likely to be dangerous unless you early resolve to trace them out, and make a determination to decide only upon those facts and those principles which tend to elucidate this confederacy and combination. Before I go farther into this subject, permit me to say, that throughout this case, every thing shews, that courts of justice, as persons who have great transactions to mind in common life, are obliged to take the words, and the ideas of men, with a great deal of scrutiny and sometimes with a great deal of doubt. Sorry am I to say, that on the part of the prosecution, as well as can be said of those against it, their appears to have existed great heat; and there appears throughout, great heat and animosity in the minds of the witnesses, who gave their evidence.

The subject now before you, gentlemen, is one, in an eminent degree calculated to excite great feeling. There is no subject that can excite more strongly the feelings of men, than any, even remotely connected with religion; and sorry am I to say, although the page of history confirms it, men in every country, in every age, have been willing to cut the throats of each other for God's sake; thinking, the laws of God would justify the criminal act, because of the important objects they had to effect. In this case all the members of this congregation it is evident, or almost all of them are marshalled in parties. Any one of them may deny it as he pleases, he may say he does not belong to any, he may think so, but he does not know himself; you will find on looking at the testimony of all of them, there is not any one, who has not shewn he is a member of a party, and has the most ardent wishes for the success of that party. We have been told by the opposite side, their's is not a party, our's is; that we have common and ardent feelings, that may mislead us, they have not; but this has not been the impression upon the minds of even their own witnesses. Busch himself, had no idea of separating himself from the party to which he belongs; he says, "we had no secrets in our case, the time of meeting, and the purpose for which we met were generally known by the *other party*." What other party? Other than who? Other is a relative term; where there is but one thing of a kind, there is no other of the same kind. Busch has indirectly though completely admitted, there is a party, that there is another party co-relative to that party, as each side called the other by that name. All the witnesses call the German advocates, the German party, all the witnesses on the side of the defendants speak of the English party; it is only in this court, when it does not suit for a particular purpose, the existence of the party is denied. What was the

conversation of Long when speaking on this subject? Says Lehr, whose calm testimony, I think, merits your praise, "Long told me, he was willing to make it up; I asked him if they wanted a church, he said, 'no, *they* were willing to make it up;' I said, then it may easily be made up; this was a few days before the election took place." Eberle said, "it might easily be made up, if they would give a church." Now gentlemen, this was not Long or Eberle would make it up, but the whole party. Can this be denied? It is evident they have signed articles of association for the attainment of their object. I say then, the advocates for English preaching are a party in this church, and this prosecution is carried on by a party. Is it carried on by an individual for the sake of justice merely? If it was, it is common for the attorney-general to carry on the business of the state; in ordinary cases the attorney-general carries on the prosecution alone, but when private feelings are interested, other counsels are concerned. We know the expences of additional counsel does not come out of the state funds; it certainly does not come out of the funds of the defendants and we have a right to suppose, that from a party *fuss* originates this prosecution, and a party *fuss* bears the expences of it. If we had no other evidence, that strong party feelings are excited, do you not see that the language of the different persons who have given testimony, is the language of angry men? With respect to the assertion of Cope of whom the gentleman who spoke last, endeavored to give so favorable an idea, let me turn your attention to what has been said in some of the passages given in evidence on this subject. Hyle says, "before the indictment was found, Cope said, they would try by all possible means in their power to make out this petition confederacy; if they could bring it out conspiracy, it would be in their power, to put every man of them in the work house seven years, more or less; and then we will see whether we will have a church to ourselves or not." This is the declaration of one of the witnesses for the prosecution, he would use every endeavor to have the defendants in this case taken from their families and business and put into the work house, in order that his party might have English preaching. This is uncontradicted testimony on the part of Cope. George Witman himself is not free from very strong language and improper conduct on this occasion. I turn to the testimony of George Miller; this man is a blacksmith, who had rented a house and shop, of the congregation property. In the conversation which took place between Witman and this man, Witman said, "when they would get the power, they would shew us no mercy at all, that we must all soon expect it; at last he mentioned, especially you, you that are on the ground belonging to the congregation, I need not expect I could live there any longer after they would get the power, the majority on their side." Was not this, gentlemen, a direct attempt to bring this man over, to enlist him on the side of English preaching; if it was a threat to take from him a beneficial interest he had, unless he voted as Witman wanted him? Does it not shew that Witman forgot those rules, which I

have been told, generally govern his conduct, and has been borne away by party favor from a decent and proper deportment? This, gentlemen, shews you with what distrust you should take, on the side of the prosecution, the evidence that has been adduced against these defendants. The greater portion of this case rests upon the prosecution. It is their duty to satisfy you, by evidence preponderatingly strong, which will leave no reasonable doubt upon your minds, that the defendants have been guilty of the unlawful confederacy and combination charged. If the evidence is doubtful in the smallest degree, the prosecution must fail; because to convict men in a criminal case, the scales ought not to be equally balanced, there ought to be a great preponderance in evidence on that side. How does Witman represent the circumstance of the entry of Mannhardt? Did he not say—(I turn to his evidence, that I may not mistake in what I say respecting it.) “About candle-light, when Mannhardt came in, there was a cry of Mannhardt comes, *our* captain comes.” The word “*our*” fixes it exclusively upon the German party; if the English party had said it, the word would have been “*their*,” but we do not admit that he is our captain. Witman also says, “the persons in the school room made a passage for Mannhardt and several persons with him to come in and vote.” Against this there is a variety of testimony. The first is that of Hipple, whose memory Mr. Binney thinks so treacherous, and yet he does not prove that his testimony was discovered to be dissonant with that of any other witness. What does Herpel say? “In the course of the day, I was standing there on the platform most part of the day, I forget what time of the day Mannhardt and another man came in to give their votes; Busch was standing on a bench on the other side, when Mannhardt and the other man were coming in, Busch cried out ‘open the door wide, the Dutch captain general is coming,’ repeated it two or three times. Mr. Mannhardt never said a word to him and went up and gave his vote, and they turned and were coming out again; as they were coming out, he cried, ‘there goes the Dutch, their God and their Saviour.’” It appears evidently to have been the declaration of Busch, the first witness on the part of the prosecution; not the declaration of the Dutch party; it was *their* captain general that was coming. Other witnesses put it beyond doubt; Oberthier says, “when Mannhardt came in, Busch said some words, I could not tell what they were; when he went out again, Busch cried out, ‘there goes the Lord God of the Germans;’ all the person I saw with Mannhardt was William Berg. Jacob Riley says, ‘I saw Busch, I heard him say, when Mannhardt entered in, there comes the Dutch, their captain;’ after he had given in his vote and was going out, he says, ‘here comes the Dutch, their Lord God, in German.’” Now it is true, the old man Herpel did say, it was in the English language; but gentlemen, put it to yourselves, if you were called on now to say, what passed three or four months ago, on a busy day, and you understood two languages distinctly, which you were in the habit of daily hearing, could you tell in what language

it was spoken? And if it was nothing of importance to the case, surely he would not willingly perjure himself, that his evidence might be impeached. He made another mistake about the time of day, but neither of these are material in the smallest degree to the question. Dreer confirms the statements of these witnesses, he tells the same story. There are a number of witnesses who concur in this statement, and I ask you to recollect, when the prosecution closed, whether you were not impressed with the idea, that it was the German party, that cried out "here comes our captain;" and whether this testimony, does not represent it in another point of view, from the manner in which it was attempted to be exhibited on the part of the prosecution? What was the conduct of Uhler? Can there be stronger evidence of a determined hostile design to injure the individuals opposed to English preaching, a design carried to a ridiculous extreme? What is the testimony of the witness? Why, when he was sued, Weckerle said, "well Uhler, how does the flying Lyons come on;" he draws back, "what do you call me damned rascal?" "Me, I did not call you so;" the other said, "you do;" he replied, "well, if you are determined to take it so, do so;" "well," said he, "I will go sue you." Can there be any thing more absurd than the conduct of this man? And this is not a solitary instance; for in another conversation, he shewed a determination to take every advantage of the man against whom he had so determined an hostility. Bealer says, "I heard Mr. Helfenstein's case was to be decided this morning, I went in, court adjourned till the afternoon; I stood on the step, Uhler stood on the second or last step; some old woman was there who said to Weckerle, 'what Mr. Weckerle are you come to take our ministers from us;' Weckerle said, 'why woman, you are wrong, I do not care about you or your ministers;' Uhler stepped in between and said, 'why Weckerle, you are not going to strike this woman,' I stepped down too, said I, Mr. Uhler, Mr. Weckerle's not going to strike this woman, do you wish to make a disturbance by interfering." When men can act so contrary to propriety, is there not evidence of the most determined hostility? And what is the testimony to support Mr. Geyer's declaration, that a great number of men came staggering after Mannhardt in the street, going towards the school house? Is there any evidence from the other witnesses, of such a number of staggering men coming in? On the contrary, the evidence of the witnesses is, that they saw none connected with him at all, or following in his train. Then, gentlemen, I say there is great reason to presume, passion and prejudice have clouded the testimony by which you are to decide in giving your verdict on this occasion. You are therefore to make evidence from the matter and manner of saying, of the defendants. The manner, all will agree, accompanies and is a probate of the matter, in reason and construction; and consequently, you are not only to attend to what a man says, but to his countenance, the tone of his voice, whether loud or low, and whether the evidence is given in anger. It is doubtful what is the meaning of the speaker, unless you can see his

face, or have truly interpreted to you, the effect of his words, the manner and every thing combined.

Having thus considered the preliminary incidents, important to be regarded, before calling your attention to the principal objects of this inquiry, let me now say, that under the circumstances of this prosecution you are to inquire whether there is preponderating evidence, that a deliberate scheme was formed by the members of the congregation, who signed that petition to the corporation, of St. Michael's and Zion's churches, to prevent the introduction of English preaching, by force and violence, by all means lawful and unlawful. This is the confederacy attributed to all those who signed this petition. And yet, if we are to believe the testimony on the part of the prosecution, when the witnesses spoke to those gentlemen who are indicted, particularly Hœckley and Fricke, they were not at all solicitous whether the English should be introduced, or the German continued. The prosecutors then have given instances where those to whom this confederacy has been attributed, confessed, they had no desire upon this subject. Monstrous is it then to suppose, that men who have thus acted, and who are most respectable in private life should have entered into a scheme, to put down by all means, lawful or unlawful, the preaching of the English language in their churches. Impossible the charge appears therefore, in the first blush of our inquiry; we will now examine the evidence in support of it.

Confederacy and conspiracy are the agreements of individuals, in the first instance originating with themselves, and communicated to each other. When communicated to each other, the conspiracy is complete, if the agreement in its nature is a conspiracy. If this petition amounts to a conspiracy, I will admit it exists; still, however human tribunals cannot act upon it, until some overt act evidences that such an agreement was made. So long as it continues in the breasts of those who made it, human tribunals cannot investigate it; they must have as evidence of their intentions some fact, upon which to found their knowledge or belief of such conspiracy. This overt act is, generally speaking, evidence of an original agreement. It shews, that at a certain time, at a certain place, by words at least, more generally by writing, such an agreement was entered into, and such persons were parties to it. Of such an agreement no evidence has been given; there is nobody who pretends to have been by when it was made, in the vestry room, at a tavern or dwelling house. The defendants in this case entered into no such agreement. They have been indicted on a paper which has been produced, and which is no agreement between the parties themselves, but a petition to the corporation for favors, in which certain words, upon which much stress is laid, are written. From that petition to the corporation, the design is inferred; from that petition you are to decide if the defendants are guilty of the conspiracy alledged.

I will consider the petition last; because after having disclosed to you the object of this prosecution and the nature of the charge,

I am to strip the evidence of the colouring which has been given it, and exhibit the facts as they have appeared before you. On the very face and bearing of that paper, there is no evidence of any conspiracy. I will first recur to the evidence on the part of the prosecution of overt acts; for the indictment consists of two counts, both of which are but different modes of stating the charge, resulting in the same crime, a conspiracy. In the first, a form and mode of action are attributed, and definite acts are said to have taken place; acts which must appear to you in evidence, are in pursuance of the agreement. If the acts, they alledge to have been done, have been done and in pursuance of the agreement, then, if it is a conspiracy, it is one supported by acts. But it is common, lest the prosecution should fail in establishing the particular acts, to introduce the second count, which is a pure and naked statement of the conspiracy itself; not imputing any acts, but giving them liberty to infer from any thing they might make up from the testimony, evidence to shew the conspiracy was effected. We are now to take a view of these artfully connected counts; and if we are able to strip the acts from the first, the second will fail of itself. The second count can only be supported upon the principles I have stated, necessary to support the first. In order to do this, it is not only necessary to shew particular acts were done, but if they were done, that they were done in pursuance of a general agreement.

The evidence relied upon to prove there was such a conspiracy exhibits at the first blush, that the defendants had entered into a scheme, to which they were unable to give shape and effect to carry it into execution. If prevention from meeting and resolving, were the objects of the German party or of the defendants, the prevention should have been as extensive as the effort and operation might have been. In order to prove there was a settled design to prevent the English worship being introduced into the church, what is the intention attributed to the defendants? an intention of meeting, and preventing the others from meeting on the same subject. The design applies to so many circumstances, it is impossible any man in his senses could have entered into it. It is true, we can prevent you from meeting in the place we have a right to go to, as well as you; but can it be supposed that these men who are the defendants in this case, and the others whom you have seen here, had any idea, if those in favor of English preaching intended to meet in one of their own houses; these quiet men, who have grown up pretty generally in easy circumstances, if we may judge from their looks, would have approached with a design to force open the door of a private dwelling house in which the party should meet, and by force and violence to dissipate the meeting? And yet if their determination to prevent the operations of the English party, was not to extend to all the cases and all the instances in which the English party might meet to carry their operations into effect, the plan of prevention was not so extensive as the effort and operations might have been, and none but children

would have planned so madly. Here then is in the-outset, proof of the absurdity of the charge; the defendants, a great many of them certainly not brought up to intemperance or violence, are to leave at once the calm conduct of life, and combine forcibly to disturb these in favor of English worship at their dwelling houses from prosecuting their objects; and yet nothing on earth appears more irrational than this. Gentlemen, for one moment can you suppose, if any of these men at a meeting had said, "Gentlemen, let us now unite to prevent those people from introducing the English worship, to prevent them from meeting, to carry their objects into effect," would not any man of sense have said, "you talk nonsense, are you prepared to go into their private houses, and break up their meetings?" Do you not suppose these gentlemen would have reprobated the idea? And yet can you suppose, they had entered into a scheme to prevent the establishment of English worship, and by all means lawful and unlawful to oppose it; that they were to break open the houses of individuals where its advocates had met, to disturb their conferences? I am sure your feelings must revolt at the supposition. If they had entered into this scheme, (and one of less effect is nothing,) it was fastening one shop door when there were two, or one window when there were twelve; unless they not only determined to interrupt them at the common place at which they met, but also at any other, at private places and the dwelling houses of individuals. Then so far, this charge is so absurd, it is impossible to suppose it can be founded. It convicts itself as much as a charge of prostitution against a *Lucretia*; it is impossible, monstrously absurd, and cannot be supported.

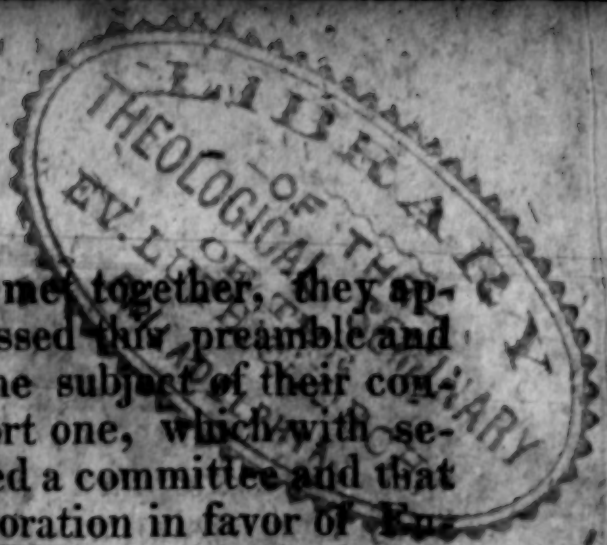
You have observed, gentlemen, that all the evidence which has been adduced, overturned itself. If in a court of justice, one should say, that standing at such a time, on a house in Calcutta, he threw from him a five-penny-bit which instead of falling, ascended into the air, and would bring one hundred persons to swear to it, would you believe it? No.—Did not the nature of the thing, imperiously control the endeavor of individuals, to control the actions of the English party, is it not evident such an agreement could not have been entered into? Let us now look at the evidence adduced, which, although it be all true, is irrelevant, it goes to prove an absurd point; to establish an unnatural result, and therefore cannot, ought not have weight.

The first evidence, is the proceedings at the meeting on the 25th September. "There," says Mr. Binney, "Schmidt, Schwartz and a number of others went over and interrupted all their proceedings." This is the first instance he has mentioned to you to shew, they went over to the German school house and interrupted their proceedings. Now, gentlemen, we have the testimony of several witnesses on our side, respecting this evening; and a witness may colour a particular event, but I think a number of them will not agree in the same misstatement; a number will not agree in a series of false facts. I ask you to look at the testimony of Dreer, I will

have cause by and by to answer what has been said upon his subject.

"Some of our members went over to the other school house, I went there myself, for I wanted to see how they came on, on the English side; they had some articles read by Mr. Keemle in English, all that they done was in English. I did not stay long there; they were beginning in such a way that I saw it would create a disturbance in our congregation. They were asked if they were in favor, some said yes, some said no; after the articles were read, I heard say, Dr. Leib, they put the cart before the horse, they went on a wrong way. Leib said, it would make a disturbance with the congregation, they ought to go on in another way. I did not stay very long there, I went away from the school house, I did not stay there till they broke up; there was nothing out of order that I saw. The articles were drawn in such a way as to give us what they please, and hurt a great many's feelings. I went home." Brandt has also given an account of this affair; he says, (and he was in favor of the English party until he thought the means they were going to take were improper,) "I went on Monday to the school house in Cherry street; I saw several I knew, especially young Mr. Jacob Lex; when I came in, Mr. Rehn was chairman; there was another young gentleman, whom I did not know until lately; I know since it was lawyer Keemle, who was secretary. The secretary had a paper in his hand and he read the resolutions, when they were done, the first resolution was, they wanted English preaching in the German congregation. As I believe it was the first resolution, to make a petition to the congregation to get English preaching. When they were read off, Mr. Dr. Leib stepped up and said, you put the cart before the horse. Then Mr. secretary say, no I put the cart into the horse, and it make the whole laugh. Mr. Leib says, there is no law in the United States and Pennsylvania, which can take the Germans from their right; you must go on more softly; when you go on that way, you make a disturbance in the congregation, you are declaring war against them; you know the consequence about seven or eight years ago. They took the vote, who was for, they should say, aye, and not, should say no. There were a good many ayes and good many noes." He goes on to describe the appointment of a committee of seven to address the corporation, and he says afterwards, "some of their people came in, it was pretty late, I retreated out the back part of the school house; when I came out of the front door, some halloed out, huzza for Dr. Leib, and some said not." On being asked if they were disturbed in the school house by improper conduct, he says, "I do not know, I did not hear any disturbance, only some was for it and some against it." Bealer says, he was there and he heard no noise.

You will judge, gentlemen, from all the circumstances, how far these witnesses deserve credit. But there are circumstances which prove beyond all possibility of doubt, that there was no serious disturbance that evening. Did these gentlemen, do their bu-



business? Why, what did they do? They met together, they appointed a chairman and secretary, they passed this preamble and resolutions; here is a writing, which was the subject of their considerations that evening, and not a very short one, which with several resolutions they passed; they appointed a committee and that committee addressed the next day the corporation in favor of English worship. Then how was their business disturbed? Did they not do their business? Look at this address; I need not read it to you. There are a great many reasons given in it, why English worship should be established, it is long—whether it was drawn up at that meeting or not, I cannot say. The committee however was appointed, of which Dr. Leib was chairman, and in consequence of this appointment they addressed the corporation the next night. They did every thing that evening they had to do; a few angry words passed on both sides in the course of it, and that was all the disturbance they met with. Why gentlemen can you suppose, that when they have such a meeting, every thing will be as calm as at a ball, or like the deliberation of a French legislature? There is something in climate and in the subject of debate that animates men; we cannot expect when interesting subjects are canvassed, they will preserve the same coolness as when occupied in their devotions. I will not go into the detail of what occurred at the meeting when Rehn was chairman; but it is certain, it does not appear, any business was intended to be done, that they did not do; they were not prevented in doing what they did. They say, they went away without doing further business, but they did not say they had further business to do. Others *accidentally* met there, or some came for other purposes, not for the purpose of disturbing this meeting; it does not appear they intended to do any thing there. Some disturbance arose and it was thought proper to adjourn; what the nature of the disturbance was, does not satisfactorily appear. That there were some blameable words, some angry words on the part of persons indicted, cannot be contradicted; but angry words are not foundation for a charge like this; it must come from other sources. The meeting in Plumb street, it is said, was to frame riot and disturbance. I think the gentleman who opened on the part of the prosecution has not seen the testimony as I have. Mr. Binney states and is impressed with the opinion respecting that meeting, that the deliberations were disturbed by the defendants. He complains of the interruption given to the meeting in Plumb street and says, when they came there, they found the doors shut. If I recollect right, Rehn does not positively swear to his seeing the doors shut; it did not occur to me, he saw the door shut, but that he was informed, is the testimony of the witness. I shall now read it to you. So far from bearing out the counsel of the prosecution in what he supposes, that Dreer was the man that shut the door, unless Dreer has positively perjured himself, he was the person that went up stairs with Rehn. The question was not put to him whether he saw it shut, and there is nobody but himself mentions it; it is unfortunate the question was not more specifically

put. Dreer says, "I went down that evening; I went to the lower room, staid there a little while, and after a while Mr. Rehn came there to the school: he came afterwards to the lower room, I did not see him at first, he said, that the door was shut up stairs. We spoke there a little bit together, and I went up and told Mr. Rehn I was going up, he might go up with me, he followed me up to the room, the room door was open and the candle was lighted; I did not see it shut that evening; therefore Mr. Binney must have been mistaken, when he said, Rehn said, he had seen the door shut. Dreer was also asked, if he heard any body say, they were going away because the door was shut and they could not do any business; he said, "I heard them say they were shut, but when I went up they were open, Rehn when he came into the lower room said they were shut, I heard no body else say so, there was not any body went away that I know of." The meeting, gentlemen, was in winter, and it was no great matter whether the door was open or shut; it cannot be said it was locked; you cannot tell whether there was any wrong done, and if it was not locked there is nothing to complain of. They met for the purpose of establishing a *fippenny-bit* society, which appears a rather diminutive name, but is established for very laudable purposes; and when you consider that it was cold, in the depth of winter, I ask you, is there any thing in the circumstance worthy of remark? But, gentlemen, in the disposition to find fault, nothing can escape the censoriously scrutinizing eye. There was an election on the sixth January last, five or six hundred people attended to give in their votes; it was the depth of winter and there were some barrels of beer prepared, some ham and sausages, as the election was to last the whole day; some of the persons came from the neck, when they came there the beer and provisions were offered to them; was there any thing in this unusual? Any thing that shews unfair intentions, or to do any thing improper on the occasion? If so, how are we to estimate Busch's conduct? He positively swears he carried beer to the judges, and they could have had no idea, there was any thing wrong in it. I presume such minute circumstances will never be considered evidence of conspiracy. What is done at the general election at which we attend as electors? Is not always provision made publicly for those who are within the house, the inspectors, judges and clerks? Is there not always prepared for them the provision of dinner and necessary drink during the day? The committee of vigilance it seems considered this subject; and we have it in evidence from one of them, that they were publicly appointed according to the ancient custom; of this committee, Bealer was one. The object for which they ordered these provisions is stated by him. "There were two barrels of beer at the last election; there was some wine I sent for myself. It was thought adviseable to get some wine and beer to keep the members from going to the tavern." This is an excellent reason which is given for it, and I shall dwell no longer on this minute subject.

Gentlemen, as to the dollar paid to Kugler, so much comment-

ed upon, we have been told by Kugler himself what it was for. It seems, he brought several members from the neck in his sleigh, and the dollar was given to him as part of his pay, to get some drink. This trifling circumstance will not operate much upon you; though it may upon those who look at every thing minutely with a damning eye, expecting it to be the effect of this conspiracy, they attempt to establish. There is however no evidence that they did unite in a confederacy to stop the introduction of the English language. With respect to the declaration of individuals, in what point of view are they to be considered? In every free country, there ever will be two great parties, differing honestly in opinion, and exasperated frequently against each other, when great matters call upon their feelings. At such a time is it possible to expect, that angry words will not pass from one to the other, and that there will not be threats, almost rising to violence, but not reaching to it? Why, at the general election, when one had said such words as, "blood is flowing," or, "blood would flow," has it not been considered to be in consequence of a confederacy of the party to which he belongs? Has there never been an election, in which on one side or the other, or on both, one has said to the other, "you have combined by all means, lawful or unlawful to carry your election; and you have sent angry rascals here to carry your designs into effect, who have struck such and such persons, and created a riot and disturbance? How far is this to be carried? Is it to be supposed that the great parties which divide the United States are to be liable for such angry, rash talk of individuals? If they are, they both are liable to be convicted for conspiracy against each other. These individual acts are not imputable to, and cannot effect the body. These ebullitions of temper are individual, and generally personal, the party have nothing to do with them; they frequently arise upon sudden gusts, upon insults given at the time; and if they are evidence of the confederacy of a party, it must be supposed, the party knew before hand, the word, look, or other circumstances of aggravation which occasioned the blameable act.

It is a rule, that the law shall not examine too strictly in criminal cases; the cord shall not be tied too tight. Words cannot be evidence of conspiracy; when they end in riot, in breach of the public peace, let the guilty individuals be punished; let them be brought to the bar. But let not those harmless words which break no bones, which are spent in the air in which they are breathed, combine in a conspiracy these respectable men, who are reputable and industrious, and generally easy in their circumstances. Thus much have I said respecting the preliminary words and facts in evidence.

If there was a conspiracy to prevent the introduction of the English into the church, how was the object to be effected? By election—then the power was to appear from the result of the election; and if the English party would have a majority in the corporation, they would have the rule in the congregation. For, not-

withstanding all that has been said of the powers of the congregation by charter, the powers of the congregation are limited and confined; when the vestry is chosen, every thing else is to be done by the vestry, and the great object is to get the vestry, all, on the side of one of the parties. This was the attempt, and the artfully strained efforts of the English party were to get the majority in the vestry. The election was the place at which the farce was to be brought forth on each side. If they gained the election, it was the sum, substance and aim of the controversy; if they gained that, they gained every thing. If they lost it they lost every thing. This was the point, to gain which every exertion was made, and both parties knew it. You are to see then, if the German party had determined to keep the English party out from the election; and it is by this election, I am to test the fact whether there was a conspiracy or not. If there was not a joint effort to waive the election, or prevent it; there could have been no combination for that purpose. Let us see what was the combination at the election. If there was not any combination there, the school house meetings are of no consequence; they could not have been more than introductory. But there are more necessary matters to be inquired into, than the pot-hooks and hangers, by which the good writer has gained a good hand. If there was no combination at the election, there could have been none to disturb and defeat it. If there was a systematic design, to prevent by all means, lawful or unlawful, the English party from exercising their rights at the election, it would have appeared there—and I trust I can shew you, that all the irregularity and violence there exhibited, were the effect of the unlawful, interested and artful conduct of the prosecutors. All the disturbance excited there, was as entirely the effect of their machinations, as the falling of a heavy body is the consequence of its rising. It began with them, their conduct was the cause of all the subsequent disorder. It has been said, there was a disturbance with Lex before that with Wagner began, and that it was by those who wore the badge on their hats, the little eagle, against those who had not. That the moment Lex appeared, they knew him, by his not having it, and treated him accordingly. If this is the least reason that can be given, it shews, the best reason is lighter than a feather. Mr. Binney said, when Lex came up to the railing, they pushed him off, because he had no badge. Now, none of the vestry had badges in their hats and therefore it could not have been because he had not the badge. I admit he was attacked, but it does not appear, he was attacked in consequence of any combination; what was the cause, has not been explained; but it does not appear to have been in consequence of a great effort. Upon what ground the controversy was entered into, remains more obscure than any other circumstance in this case. There was a cry of "turn him out," no injury was done to him and he suffered nothing by it.

This having been premised, I beg leave to call your attention to the charters adduced in this case; a due understanding of them

is absolutely necessary to a decision of the question now under consideration. I think it will appear by the first, granted in 1765, that the powers of the congregation are expressly defined as well as those of the corporation. First, a name is given to the corporation, a different one from that attributed to them in this indictment. The word "evangelical" is not part of the corporate name. They are incorporated by the name of "The Rector, Vestrymen, and Church Wardens of the German Lutheran Congregation in and near the city of Philadelphia, in the province of Pennsylvania." They are privileged as a body corporate and empowered to take property, &c.

The sixth article is as follows:—"and we will and require, that the rents and revenues of the said Rector, Vestrymen and Church Wardens, and their successors, be from time to time applied by the said Rector, Vestrymen and Church Wardens, and their successors, for the maintenance and support of the rector, minister and officers, duly settled and officiating in the said Lutheran congregation, putting in good order and keeping in repair, the burying ground, school and parsonage houses and other houses, which do now or hereafter shall belong to the said congregation, and for supporting, repairing or rebuilding the said St. Michael's church, and assisting and supporting one church more within the said city of Philadelphia or Liberties thereof, for the better accommodating the said congregation, and that the said rents, revenues or other estate of the said corporation, shall not be appropriated to any other use or purpose whatsoever."

They are fully empowered to do, preside over, and mind, the pecuniary matters of the corporation exclusively.

The eighth section, empowers them to make regulations and do every thing needful for the good government of this congregation; a sweeping power, necessary to give them full authority to do any thing not introduced into their express powers, and the remaining articles state the number of the corporation, how they shall be chosen and the time of their stay in office.

The act of 1780 differs very little from the proprietary charter: it alters the name of "rector" to "minister," and "province" of Pennsylvania to "state" of Pennsylvania. The seventh section removes a number of the vestry men and church wardens, continues some of them in for some length of time and so regulates it that one third should go out thereafter every year. The ninth section fixes the qualification of the voters. The eleventh section has in it the same sweeping words as the eighth of the proprietary charter, except that the presence of two thirds is required.

I contend then, and shall only say for the present, under your Honors' direction, liable to the observations hereafter to be made by my colleague, that by this charter to the congregation, the same legislative and executive power, if it may be so called, is given to the corporation as by the proprietary grant. The sweeping power of doing every thing lawful and necessary for the support and good government of the congregation is given by the eleventh section

of the charter and the eighth section of the law. Under this act, for forty years together, the German language was used for public worship, and until a very late period was alone desired in this congregation. Those, whose money contributed to its original establishment cannot be supposed to have looked forward to the establishment of any other language in this church. Since the year 1800 however a number of its members have wished to introduce the English language into its public service. The effort in the first instance is to introduce it alternately with the German; holding out the plausible idea, that it is not meant to exclude the German. But the advocates of the German fear, that the entire danger of extinguishing altogether their manner of worship lurks under this proposition ostensibly fair, and that if they admit the English language at all, it will probably lead to the exclusion of that language, which their ancestors brought over with them and established in that church. This is a short history of what occurred in 1800 and the principal upon which we rested.

In 1805, the endeavor to introduce the English worship became of a more serious nature. Until then there was no dispute among the members; until then the elections were pretty thinly attended. The disputes then caused heat; the officers before this, had sat at a table in the room, with nothing before them to separate them from the voters; but as a greater interest now actuated them, the press increased, and it became necessary to rail off an apartment, which the crowd could not rudely approach, and in which the inspectors and clerks might sit without being put to inconvenience by the pressure, which was done accordingly, and at that time this railing was made in the school house to prevent the disturbance of the inspectors. This first attempt to introduce the English language failed and its advocates disappointed in their endeavors to get one of the meeting houses, withdrew themselves in 1807 from this congregation, and built St. John's church in Race street, in which the Revd. Mr. Meyers now preaches to them in English. For many years the Germans were left to the exclusive use of the German language, its opponents had withdrawn themselves generally; schism before this time did not exist; public business was done honestly, and when done honestly the power of those who do it is seldom questioned. We have seen that by the eleventh section of the charter the congregation are empowered to chuse the vestrymen and church wardens; but by the eighth and eleventh sections of the amendatory charter, the minister, vestrymen and church wardens are to do every thing else, particularly to appoint the officers of the corporation. Permit me to refer you to the eighth and eleventh sections of this act of assembly of 1780.

SECT. 8. "*And be it further enacted by the authority aforesaid, That whenever any vacancy shall happen by the death, refusal to serve, or removal from office of any one or more of the vestry men or church wardens, the said corporation shall have power at their discretion to appoint the time and place for electing others in their stead, whereof they shall give public notice to the congregation, on*

the preceding Sunday, and that at the time and place so appointed some fit person or persons shall be elected in the place and stead of him or them so dying, refusing or being removed as aforesaid; and that the person or persons so elected shall be, remain and continue in office so long as the person or persons in whose place or stead he or they shall have been so elected, would or might have continued; excepting the person or persons who may happen to be elected as immediate successors of the said six first named vestrymen, who shall continue in office for three years from the next preceding annual election; yet so that if in any year there shall happen to be more than four vestrymen chosen, by reason of the death or removal from office of any one or more of the said first named six vestrymen, that then and in that case, the person or persons over and above the number of four, who shall be so elected to succeed any one or more of the vestrymen aforesaid, shall be, remain and continue in office so long and no longer as may be necessary, in order that not more than four (being the third part of the whole number of vestrymen) may go out of office at any one annual election, and that after the deaths of the present six first named vestrymen, one third part in number of the vestrymen, and of the church wardens, may go out in rotation in every year."

SECT. 11. "*And be it further enacted by the authority aforesaid,* That the members of the said corporation, at their first meeting after each annual election, shall and may elect by ballot from among their own number a president and a secretary, and that the senior minister or any one of the vestrymen or church wardens shall be eligible to the office of president, and in case the senior minister shall at any time happen to be chosen to the said office, that in his absence, the next oldest minister present shall for the time be president in his stead; and that the said corporation shall and may at the said first meeting after each annual election choose also a treasurer, who shall be elected from among such members of the said congregation as are not members of the said corporation; that the president shall be empowered and required to call a meeting of the said corporation, when and so often as he shall find it to be necessary, or shall be requested so to do by any three members thereof; and that the said corporation and their successors, or a majority of two third parts in number of them, meet and convened upon due notice given (which two thirds shall be a quorum) from time to time, be authorized and empowered to make bye-laws, rules and ordinances, and to do every thing needful for the support and government of the said congregation: *Provided always*, that the said bye-laws, rules and ordinances be not repugnant to the laws of this commonwealth, and that the same be duly entered and registered in the books of record of the said congregation."

If we look at the other clauses of this act of incorporation, or confirmation of the act of incorporation, all the other powers necessary to the good government of this congregation are conferred upon the corporation. I cannot suppose that the general powers necessary to carry the right of choosing vestry men and church

wardens into effect, are given by the particular words, when other words are used which may be supposed to vest the authority in others. I am aware of the rule that when a general use is made and no means are granted to carry it into effect it will be supposed that we must draw the conclusion, that it is necessary to give a grantee the powers necessary to carry the grant into effect. If a man say, "I will make you a grant of a plot of ground surrounded by other lots," it will be supposed he granted the use of his other lots to go to it. This is a general rule with which I am acquainted. But suppose, it is particularly limited, that you shall not have that otherwise implied grant, will any man say, the rule is not contracted? Will any man say, the presumption will stand longer than the contrary appears? It is true, if the right to choose church wardens and vestry men, were the only grant of powers, it carries with it a right to take all those preliminary steps necessary to carry that grant into execution, if there was nothing in the grant itself which gave the power to another body to carry it into execution; but when there is no necessity for presumption, will any man say, presumption is to step in, to use the cloud of necessity, to do a thing necessary for the attainment of original objects; to use the means *sine qua non* the objects cannot be attained. But when the power is given to the corporation to do every thing, will any body say, the grant to elect carries with it the power to appoint the officers of election. I defy the gentlemen with all their knowledge to produce a case in which, when an individual power is given by a grant, and when any thing necessary to carry it into effect is granted to another, it shall be supposed, the grantees of the individual power possess that necessary to carry into effect. I would ask, who appointed the inspectors between the years 1765, and 1800? Will they say the congregation? If they can shew it, they would have shewn it; and they would then indeed shew something to their purpose; but, gentlemen, the appointment has always been made by the president. He is the officer of the corporation it is true, but he is also the officer of the congregation, and so is the inspector. There is no necessity for giving the means to the grantee when they are so given to the corporation. In short the corporation have not only the power to make ordinances by this act, but they have more. In a statute every word is not construed unless every word can carry the meaning attributed to it; you are to conclude that the legislature meant nothing when they said something, unless you are to suppose additional power is given by additional words. I submit, that the ninth section is not a section of grant, if I may be allowed the expression, (*vide ninth section.*) The seventh section grants a power to the persons duly qualified to elect, of electing certain officers, (*vide seventh section.*) Then so far as to the right of election, it not being defined by the charter, another instrument than this act is to be looked to, to find out what the right of election is, and who has the right of exercising it. Until the ninth section the act has not said, what is the quality of electors, and yet said, they shall be of a certain age. It becomes

necessary for the act to confirm itself, to say what shall be the qualification of electors. I should suppose therefore that from the wording of this ninth section, the necessity of eighteen years is a new provision; or if the age of eighteen years is required in the fundamental articles, then there should be a legislative provision paramount to the original articles, fixing it thereafter beyond the possibility of argument that eighteen years shall be required in an elector, and which would not be in the power of the corporation to alter; for one or other of these purposes this clause was introduced. The act goes on to say that the elections are to be held by ballot; what they are to be for is before described. It merely makes the statutory provision of "MAGNA CHARTA, all elections shall be held by ballot," &c. In order to shew what they meant by "for," it goes on to say, "no person shall be eligible for a member of the corporation or officer of the congregation, who is not qualified, as aforesaid, except the minister, &c." This shews that the ninth section is merely a defining section of what precedes, and not a granting section; it contains no grant but defines the manner and the persons by whom the corporation powers should be exercised.

Adjourned.

THURSDAY, 18th JULY, 4 O'CLOCK, P. M.

MOSES LEVY, Esq. *in continuation.*—*After some preliminary observations, he thus proceeded:—*

Gentlemen, I am not disposed to controvert the doctrine in 3. Burr. 234, that the corporation cannot make bye-laws inconsistent with their charter; but I do say, that this bye-law is not inconsistent with the charter; and I think it will appear clearly in evidence, that this bye-law, the existence of which is so decisively proved by the document in evidence, to which we have referred, that no doubt can be entertained of it, was passed after great consideration for the best interest of this institution. I have observed, that so long as there was no controversy, the exercise of the corporate powers by any officer of the corporation or by the corporation itself, was never questioned. When men agree in opinion they never enter into disputes about the authority of each other to act. It was in conformity with this general principle, that we find great inattention paid, in the early stages of the administration of the affairs of this congregation, to the charter and act of assembly. It is impossible to know who exercised the power of appointment before 1805; sometime one is said to have done it, sometime another; sometimes the witnesses state it to have been done by the corporation, and sometimes by the congregation. Andrew Busch says, "formerly, before the election would be held, the president would say, 'gentlemen we want judges and he would name one, who would say that he would have nothing to do with it—then among themselves they would choose another—there was no law, only they would make the election themselves, in peace.'" This shews that until the controversy began, no question was made about

the right of exercising this power of appointing inspectors. John A. Uhler, another of the witnesses of the prosecution, says, "generally a few days before the election, the vestry meet and appoint inspectors, and do some other business;" and afterwards he says, "I saw Hœckley and Lehr taking votes, I believe they acted as inspectors that day; before that, they were appointed by the president or vestry," and his own conduct shews his submission to such a regulation; "a short dispute arose in the vestry, and I said that the corporation should appoint inspectors; the German party carried it by a casting vote that the president should appoint. I begged him to appoint in due time, because I was afraid of what might take place." It seems from Uhler's testimony he also supposed, that either the corporation generally or the president could appoint. Charles Eberle has also given his testimony upon the same subject.—"I never was present at an election where the inspectors were chosen, the nomination was always made in the corporation." Krebs has also given his testimony upon the same subject.—"I was elected into the vestry first in 1790—I continued off and on for twenty-one years. From 1790 and before, the inspectors were always chosen by the congregation, assembled in the school house, let them be few or more; no inclosure was known till 1806 or 1807." Peter Lex upon this subject says, "formerly the inspectors and judges were chosen by the congregation on the election day. The accounts were read off, then wo called out, I propose such an one for inspector, &c.—then he who proposed put the vote. This was altered when the dispute arose about English preaching. The secretary said it could be done by the president and corporation, who found it necessary to have a small place partitioned off for them. It was spoken of in the vestry always and the next day the president nominated such as had been agreed upon." Honey has also given his testimony upon the subject.—"We thought the appointment of inspectors so small a matter that we did not do it in the congregation; I dont know that the appointment was ever made in the corporation, but we waited until we got into the school house, and then the president appointed whom he thought proper. I appointed them in 1815; in 1814 I don't recollect.

Here then appears to have been the most irreconcilable number of ways of appointing inspectors of the election, some one of which could not be warranted by the charter of corporation or by the laws. In consequence of this it became necessary to fix the person by whom the appointment was to be made; and by the bye-law of 1805, this power of appointment was vested in the president, which accordingly was entered among the bye-laws of the corporation, in the book of the corporation twenty-first December 1805. This would have caused a dispute after every election, if there had been any chance of success in subverting it; because, if the election had not been conducted by those authorized to conduct it, it would be said, as is now attempted on the other side, that the election was not regular, upheld by men, not competent to decide.

upon it. As there was no regular practice, when the first schism and controversy began, it became necessary to ascertain who should appoint the inspectors. This bye-law, calculated to carry their elections into effect without disorder, has been submitted to from 1805, until it became the interest of the prosecutors in this cause, to call it in question: unless a single effort of one Græff can be called a disturbance of this law, which fell through and which I will notice by and by. Honey did not know an instance in which the congregation appointed. This bye-law put into the hands of the president of the corporation the power of appointing the inspectors to conduct the election for vestrymen and church wardens, and with great propriety because the corporation are chosen by a majority of the electing members, the electors; they therefore represent the sentiments of a majority of the congregation by whom they are chosen, and the corporation chose the most respectable man out of their number to be president. When therefore the power was given to the president, it was given with general discretion for the general good; he was to appoint the inspectors by whom the election was to be conducted. If it had been otherwise, efforts would have been made to disturb the election. If the inspectors were to be chosen every election by the majority, there would have been a scramble for one side to get its numbers at the ground before the other; there would have been an effort such as we have seen at our ward elections, where sometimes the party who are not the majority gain the ascendancy. With great propriety therefore, this power was vested in the president, who, from his respectability and knowledge would probably make such appointment as would be satisfactory. The inconvenience of this to the minority was soon felt; for the chance they had of meeting early on the ground to put their men in by a majority was taken away; and therefore a Mr. Græff procured an opinion from the attorney general, to shew that this appointment by the president, was contrary to law and the constitution; he failed in the object for which this opinion was procured. After this nothing was heard of in opposition to this bye-law, and Lehr says, upon the opinion shewn some years ago, "they did not mind it they went on—Mr. Woelper was president, he appointed inspectors and afterwards it was always done so. When Mr. Muhlenberg was president, I stood by him and saw him appoint inspectors—it was before this congregation separated." Ever after this bye-law until the present occasion, it has been universally known, submitted to and practiced under. Can it be presumed that there was any defect in this bye-law? Can it be presumed after a practice of nine years in consequence of it, there was any want of authority in making it—that two thirds did not agree to it? I think not, and particularly when you find those very gentlemen who now endeavor to avoid it have acted under it and admitted its legality and operation until now when there is no other means of carrying their point than by questioning it. If the advocates of the English language wished to ascertain if this was a valid bye-law, they might have done so at

any time by procuring an information to be filed in the nature of a *quo warranto*, as they have done in the present instance, to ascertain whether it be a *valid bye-law or not*. They ought to have done so; but their intention was, knowing that the German party was a majority, and thinking they would not be likely to attend in sufficient numbers when the election opened, to let it go on for nine years without any opposition that they might have an opportunity to take advantage of the inattention of the contrary party. They accordingly put it to vote whether the appointment should be by the congregation. It was their object to bring their men on the ground as soon as the clock struck nine, and when the accounts were read over to take the advantage by counting their numbers. We do not know whether this was the case; but can you doubt, but, that those who were in favor of the appointment by the congregation were all ready to vote in favor of it; and if it had been carried, it had only been because of the others not attending when this unexpected motion was made. That this might have been the use made of it is certain, and that it was fair to give notice of it all will agree, that the opposite party might be as ready as they were. I ask whether they did not attempt to take the German party by surprise? Therefore it was an unfair attempt, particularly as this bye-law was submitted to by them until this election, and that they did submit to it I will prove by the declarations of a number of their witnesses. "At the meeting," says Uhler, "of the twenty-sixth September a short dispute arose in the vestry: the German party carried it by the casting vote that the president should appoint. I begged him to appoint in due time, because I was afraid of what might take place." At this time Uhler expressly admitted that the president might make the appointment; how could he do this, if he thought the law unconstitutional or void? Geyer, whose ideas are as correct upon this subject as any member's of the congregation, shews what they are by the evidence he gives. "I was present at the corporation, when the motion was made to appoint the judges, and they refused because a motion existed that the president should do it. The president was asked several times to appoint them and he refused—I asked him myself." Mr. Dreer mentioned the motion made by Witman himself, and it is not denied but is confirmed, which is an acknowledgment. "Witman proposed to repeal that bye-law, and proceeded to voting, and there was a majority to preserve the bye-law, and a small number against it—It was voted, the whole election should go on as formerly and the bye-law be preserved—that the president should have the same authority he formerly had." Then it appears that Witman himself absolutely made a motion to repeal this very law. The law has been read from the book of minutes and a number of witnesses referred to the existence of the bye-law, and the conduct under it for years past. Then Witman, instead of insisting on the night of the twenty-eighth December on the exclusive right of the congregation, moves as a member of the corporation that the inspectors he had nominated should be appointed; his motion was not carried, and

he then moved, that the president should appoint them. What! move that the president should appoint them on the twenty-eighth December 1815, and then come forward with a declaration on the sixth of January following, that the president had no power to appoint them, and that the appointment was in the congregation! I think, gentlemen, that nothing could be more apparent than, that this attempt to impeach the validity of this bye-law is the last resource of despair. After every attempt to get the officer of the corporation under that bye-law to appoint, in all which its force and effect are acknowledged, these gentlemen attempt on the sixth of January, and now by the counsel on the part of the prosecution, to prove, that neither the corporation nor the president have a right to appoint; and what they have submitted to for nine years, and over and over again declared to be in the power of the corporation, they now declare before you, that, they have no right whatever to do. In what manner does Witman make his motion to overturn the acts of nine years on the election day? Had any notice been given to the opposite party to consider it, and come prepared? never any—he came to say what he could in support of it, not at a time stated by the corporation to act upon such points; but on a day, when the charter orders nothing else to be done—for appointing the election to be held that day, excludes any thing else: Coming that day and taking the question that day, as he did, no man could have anticipated. At what time, and in what manner does he move it? Immediately after the Treasurer's accounts had been read, seeing the tardiness of the old gentleman, who was president of the corporation, he jumps into the enclosure, takes the advantage of Honey, who was old and slow, alarms the people and puts the question. Honey says, "he got the upper hand of me." Is the bustle to be such as at a horse race? Is a man to be jostled out of his place, and another to get up and harangue the people instantly? And not requesting them to consider of his proposition; but to inquire immediately whether the appointment of inspectors was right and whether they would appoint the gentlemen he proposed as inspectors. Now, as all questions are taken in deliberative bodies, there ought to have been two separate questions; first, whether the congregation would appoint, and second, whether these persons he nominated should be appointed—giving them an opportunity to decide upon each question. There were some who thought, that the appointment by the congregation was best, who upon the double proposition would say no; because they would not agree to the candidates, although they would agree to the appointment by the congregation. It is not to be wondered at then, that the members did not understand what it was about: I will venture to say, that if they had been asked, what was this man's object, a number of them could not have told what it was. You find, Dreer did not understand him at all; he said, his motion was, to appoint them himself. Many others assumed like errors; one said, he had read the opinion of the attorney general, that he was to appoint the inspectors; one wonders, the president did not know

what was going on—they were struck with astonishment, and those who did understand it, were struck with rage and astonishment at the tendency of it.

It may be said, that this unexpected outrage produced that disorder, of which the opposite party complained; but it will not surely be allowed them to generate this misconduct, and then avail themselves of it. Turbulence and riot were the natural consequence of such a proceeding; it was an attempt to carry by a trick an important measure, by which much feeling had been excited. Honey had appointed the inspectors, Hæckley and Lehr, one the day before, and the other, two days before, and informed them of it. Lehr tells you, he hesitated whether he would accept the appointment or not; but he did accept it after much solicitation. What was the duty of the president? he was to designate who they were to be, as soon as the accounts were read off, and while Witman was haranguing, he did so, and called them in to take their seats and go on with the election. Here then was the beginning of the riot and disorder that took place on this occasion. Surely it was fair to give notice of this motion, and it was also fair to give notice that opinions were taken or about to be taken, and produced at the election, concerning the validity of the election law; that the opposite party also might consult counsel; and they probably might have procured the opinions of respectable men, in opposition to the other. The opinion of the attorney general was an *ex parte* proceeding, brought in by Witman like a thief in the night; under a false pretence of its being an authoritative document, because it was from a law officer of the government. Fully we respect the attorney general, fully every attorney general ought to be respected, but every attorney general has a certain legal authority, beyond which his powers do not extend. An indictment signed by him, has all the authority it can receive, and he has the power to stop by a *nolle prosequi*, all proceedings in criminal prosecutions; but in a civil one, he has no more power or authority than any other individual in the community. His powers are as much limited in civil cases, as if the transaction were not made known to him; and his power extends no more to a subject not imparted to him, than the opinion of the attorney general of the state of New-York ought to have, in actuating our conduct in Pennsylvania. When the gentleman gives his opinion according to the best of his judgment on a question of civil right, it is of no more authority than that of any other gentleman of the bar; yet it is received to have an effect over the minds of the vulgar, who suppose it to be one of the highest authority. The opinion of the attorney general upon the construction of this charter, was not the official act of a law officer of Pennsylvania, authorized to express his opinion on that subject; but the opinion of an unauthorized, unofficial member of the bar.

Here then began the disturbance, of which the effects are so much complained of by the opposite party. Witman knew, that the president had, by the bye-law of 1805, a right to appoint the

inspectors; he says in his testimony, no inspector had been *publicly* appointed, when he made his motion. It is true, but an evasion, and if the opposite party have a right to complain that Bealer said he did not know of any disturbance at the corner of Brewer's alley, when it took place there; we have equally a right to complain in this instance, that Witman knew, who the inspectors were who were appointed, and we may say as they did in this case, Bealer was not particularly asked the question. Honey says, he got the names down on a piece of paper, this paper while the accounts were reading off, Honey laid down upon one of the books, and laid his spectacles upon it. While they were reading off, Witman took the spectacles off the paper, looked at it, shook his head, and laid it down again; he therefore knew who were the inspectors. (*Reads Bealer's testimony, relative to this fact.*) Now, gentlemen, I think I have proved, that what I said was true; here is the testimony of Bealer, who saw the paper afterwards, and at the time, containing the names of the inspectors and clerks, which Witman took up before he made the motion, and must have seen the names upon it. But this is not all—I refer to the testimony of Herpel upon the same subject; “before that I leaned with my arm on the railing, I saw a small piece of paper on the books with some writing on, and I saw Witman look at it, and when Mr. Helmuth came up to Mr. Honey to put the inspectors in, Mr. Honey immediately caught hold of that paper, and upon that, Witman jumped up on the chair and said, he had the power from the attorney general to put inspectors in.” This, therefore, confirms what has been said, that this little piece of paper was in the possession of Witman, and that he read it before the accounts were closed. Then, am I not justifiable in saying, Witman knew who the inspectors were before he made a motion; but taking the advantage of the tardy movements of the old gentleman who was president, he jumped on the bench and desired the congregation to choose two inspectors of his nomination. This was a great outrage upon the part of Witman and gave rise to all the misconduct of which the other party complained. It has struck the common sense of the English party, that this was a great outrage; for at the least one of them considers it a blot which may mar their prospects in this case. I will refer you to what has been given in evidence by Hyle upon this matter. “I heard a conversation between Busch and Cope in the market; I could not understand all, but at last Busch turned his face toward me and I heard him say, there is one article will go against us hard; Witman knows an article of the bye-law, which authorizes the president to appoint inspectors, which will make it appear that Witman was the beginning of the disturbance.”

Now gentlemen of the jury, here is the confession of one of the champions of the opposite party that this was a thing that must endanger them, must go hard with them, and it must strike the common sense of any man, that it is contrary to the principles of justice, that men should create a disturbance, and then take the advantage of it to effect an end they could not have gained without.

No wonder there was a disturbance in this congregation; a temporary scene of noise and confusion ensued from it, and I may safely appeal to you, was its natural consequence. The consequence of this was, two persons were speaking at once and addressing the audience at the same time for different purposes; Witman haranguing the congregation, wishing them to choose the inspectors he nominated; and Honey, looking upon it as his duty under a bye-law, calling upon the inspectors he had nominated. Here then was a different call by two different persons upon others to come in and take the same office—is it possible to prevent disorder under such circumstances? Was it not enough to raise the feelings of every man who at all felt interested in the event? it was sufficient to excite the strongest sensations. Both could not act, both could not be inspectors at the same time—who was to decide it?—How was it to be?—One side, who thought they had the law with them, were against seeing their inspectors turned out of their place by the persons called by Witman; there was a general stir, a general cry of, from the testimony of some of the witnesses, “turn out the Irishman,” a term which, as generally understood, means a kind of man who knowing the German, is unwilling to talk it; who is ashamed of his own language, and is unacquainted with any other.

YEATES, JUDGE. It means any other countryman than a German.

LEVY. This immediately produced a sort of disturbance; for it appears, Witman then proceeded to take the ayes and noes upon his motion.

The witnesses for the prosecution would insinuate, that there was a majority of the meeting, in favor of Geyer and Wagner being inspectors. This, from the nature of the thing, is impossible; because all agree, that ultimately there were more than two to one against him, and there appears to have been no considerable change in the numbers of either. The friends of the German preaching, tell a different story. Honey, whose testimony was given pretty much as most men's, who have been examined in this case, says expressly, “it appeared to me there was a greater number of noes than ayes; as soon as Witman put the question, a number cried out, ‘out with him,’ when he took an unfair question—Witman was standing on the chair addressing the people in the school house.” Bealer says in his testimony, that Witman said, “I propose Geyer and Wagner as inspectors, all those who were in favor of it, say yes, and those against it, no—there was no distinction between the questions as usual, he was too much in a hurry—there was a noise, some cried yes, and some no; some in Dutch, and some in English; there was such a confusion I defy any body to tell who carried it.” Oberthier, in his testimony, says upon this subject, “there was such a mixture, there was no such thing as telling who carried it.” Lehr has also expressed his ideas upon this subject. “There was no decision, to my knowledge, given on either side—some called yes, some no; there was no decision whatever.” It

appears, therefore, gentlemen, there neither was, nor could be a decision upon this question; and if there was, it could not be material, there was a fatal defect in its manner which shews very little consideration was given how it should be effected; provided it could be carried in any manner, it was sufficient. The ordinary mode of conducting such affairs was not thought of; there were no judges of the election or inspectors appointed, without which no election can be conducted; it is always a matter of the first importance in elections, so much so, that the laws of our land have declared who shall be the judges of the election for inspectors at our ward elections; at them the constables are to decide who are elected. Now, I contend that the existence of judges is essential to every election; but in that election there were none appointed. It cannot be pretended, any person can count the votes but the judges, who then was appointed to count the votes on Witman's motion?—There were none—he himself was not the judge; no other person was; a whole congregation could not be the judges of their own election—what judges of the election of inspectors were there? None.—If therefore, the power had been in the congregation, it could only have been exercised after the appointment of the judges; and it was totally impossible to enter into the election without choosing judges. Upon this point, if the congregation had that power, the whole election was a nullity; because they had not taken the means the law requires to attain the end. But if this election was ever so regular, the congregation had no power. The power is given them to appoint vestry-men and church-wardens, and the precedent appointment of choosing the inspectors of the election, is vested in them who have already been elected and may well be supposed to do what would be generally correct. After Witman made this motion, when he knew the inspectors had been appointed by the president, when after taking the question, he knew it had not been decided, what does he do, but attempt to act as if there had been no question taken? He called on Wagner and Geyer to take their places as inspectors. Can you say upon your oaths and affirmation, that those gentlemen were chosen! Was there not reason to suppose the majority was against them? What right had Wagner within the railing, to the annoyance of those who ought to be there. After all these outrages against the members of the German party, is this additional one, Wagner's going, without authority to take a place from which he would exclude others who had the authority to be in it. What could they do? To small evils man may submit, it is his duty; but when specious injuries are suffered, when more than your temporal interest is concerned, is any man so perfect a cucumber, that he could see Wagner going in there to turn out those that had a right in it, without putting a stop to it; and if he should attempt to put a stop to it, is it possible it could be called a conspiracy? There are few men who, being asked, would not acknowledge, that they would have done the same thing; they would have repelled the effort by the same force that was used in it; they

would have laid their hands upon Wagner, *gently*, if that could have prevented him; they would have laid them on *hard*, if it was necessary. If the force was not great, then the opposition would not of course be great. I submit to you, they had a right to prevent Wagner from going into this place. That this was the cause of the noise, is testified by many witnesses, Honey, Bealer and several others; all of whom say, this was the cause of the great disturbance and confusion which existed, and you find that it was; you find Bealer was complained of as one who first laid hold of him. The Germans did take hold of him, but what did they do to him? Did they injure his head so much, that trepanning was necessary, or did they spill his blood? Did he spend any diagulum in curing what he suffered that day? No; he was not hurt, mind nor body, and there never was a more exact application of the force necessary to prevent an outrage than upon this occasion. Enough force was applied to stop him from executing his purpose, but not such a force as prevented his business, or lay him up some time; or was there any medicine required to cure him. Where is there a man who would have acted with more forbearance? If we were to take the account given by the opposite party, who wish to fix each act of individual outrage upon the whole of the defendants; if each is accountable for the act of any one of them, then we must suppose, that the men who conducted themselves so moderately and with so much forbearance towards Wagner, were persons whose object was blood, who did not proportion outrage to outrage—there was no such thing.—There never could be a greater refutation of the attempt of the other side, than, that there was a majority of more than two to one, all powerful men, with crooked Schmidt among the rest, whose crooked legs were sent for here to look at, and not one of them injured Wagner. And yet one would suppose, that a den of robbers, consisting of men, mortified by the occurrences of life, so mortified, that they did not wish to exist, instead of those people, boiling with a religious zeal, had attacked Wagner with the most bloody intentions. But it appears they did not attempt to injure him; they tried to prevent him from getting in, and his clothes might have been nearly torn off, but it does not appear, that a single garment was taken from his body. In this moment of agitation, the stove was overset, which, of course, would make a momentary confusion; but how long did it last? All the witnesses agree it did not exist for more than from two minutes to five. This then is the disturbance—this the principle occurrence of that day. If, gentlemen of the jury, there was an attempt to disturb the others, in the exercise of their religious worship, to prevent their worship in English, the election day was the object at which they were to aim. Have you any evidence of their coming to the election armed? The single sword was the one worn by the younger Cope, one of the English party, and he took care to shew the people he had it, which was as much as to say, “here am I with a sword if any dispute takes place between the parties, I am ready to use it.” There could be no other meaning; he was the only

man who had a deadly weapon with him, and there was not the least appearance of an intention to use force. They have not much right to complain, that the authority introduced there for the preservation of the peace, was not submitted to, under all these circumstances. The officers of the peace, in dispensing justice, should not consider by whom they are asked to go to a place; it is their duty to act impartially as well against those who requested their attendance as against others. Riley says, in his evidence, that when he saw the attack upon Lewis, he came to Vanderslice, put his open hand upon him and asked him what he was going to do; Vanderslice turned round and asked him, "what, Riley, do you want to take this man from me," and immediately dragged him out of the room, pulled him in the snow, and afterwards made an acknowledgement what he had done. Is not his conduct an acknowledgement that he knew he had not acted correctly? The officers had no right to come there; but, if they had the right to come there, their conduct was very improper. Vanderslice was very quick in punishing one party, at least Spiess, whom instead of seizing to bring him to trial, he gave a severe blow under the eye with his mace, part of which is bone and part wood. This was very hasty and unwarrantable conduct in a constable; they are valuable officers if they preserve that conduct the law imposes on them; and they ought to be supported if they preserve it; but they ought to consider, that although their situation is not high, their duty is respectable; they are in a measure, judges and magistrates and ought to be disposed to proceed with reflection. Was there any certain provocation given by Spiess to this man, to authorize him to turn round and ask if he intended to take the man from him, and justify him to take his mace and strike him under the eye. These are unwarranted outrages; are they, gentlemen, to pass with impunity, to effectuate the objects these persons had in view? The right they had to come there would only be upon a suspicion of a breach of the peace; and this suspicion ought to have arisen in the breast of a third person; it was dangerous for any of the congregation to bring them there—they are seldom seen at religious elections. Nobody speaking of them, admits that it was the custom ever before, and Geyer appears to have had strong fears when he ordered these men to attend there.

After Witman's motion the election would have gone on tranquilly, but he was not satisfied; he placed himself at the railing in such a way, that the inspectors could not proceed in the election, and they could not prevail upon him to choose another situation. Mr. Binney says, he staid to take an account of the votes, and that when removed he could not. If this was his intention, I think he might have taken another place, at which he might have seen those who come to vote as well as in that; but all the witnesses agree, that he would not remove from his place. Bealer says, "there was no further interruption, but what Witman made, the place where the inspectors were, is about four feet high; by it is a pillar, Witman pressed himself in there and sat down examining people, that

he had no right to. Mr. Lehr told him frequently, Mr. Witman, I wish you would go and sit down, I am very inconvenient here, I have hardly any room, but he would not pay any attention." Honey, whose testimony was given as coolly and dispassionately as any one's, let him be who he may, says, "Witman seated in the enclosure, took out a paper and wrote, and continued writing all day, until they were done voting. He was repeatedly requested by the inspectors to come out of that spot, to sit down in a chair or somewhere else, they were incommoded by him." Lehr, who also gave his testimony in a very calm and dispassionate manner, has told the same story relative to Witman's conduct, (*vide Lehr's testimony.*)

What, gentlemen of the jury, is to be done with such a man? No decent remonstrance would get him to remove; he staid there as long as he chose, and no remonstrance would induce him to go. How then can it be said, that the German party carried any terror with them? Was Witman afraid? Did he exhibit any fear on this occasion? Did he not defy their will? Nobody appears to have taken hold of him—where is the indication of violence in the conduct of the German at this time? There were none except individual contentions, but when the English party attempted to bring into the enclosure those who had no right to be there; and then there was only such opposition, as to prevent them from doing what was contrary to the laws of the institution. Was the election stopped? No; it went on till eight o'clock at night, when the chartered hour was arrived; then the polls were closed and the votes counted off. What was wrong in the election? Was it not conducted in as fair a manner as it could be? Where is the man who can say, he was prevented from giving in his vote? No one can say so: away then with the idea that any of them were inhibited from voting; every man had an opportunity to do so. Instead of shewing disorder and confusion to the prejudice of those in favor of the English side, when the Germans had so large a majority as two to one, their conduct was honorable forbearance, and entitles them to praise, not to censure. The votes on the English side, amounted to two hundred and forty, the votes in favor of the German, amounted to five hundred and thirty odd; there was therefore a majority of more than two to one. I ask you, did not each party know its strength? The Germans knew well those who composed their party; the English knew those who composed theirs. With the majority of two to one, the Germans could vote in the men they chose and keep out those in favor of English; with a power to effectuate their purposes by lawful means, to carry their point consistently with the laws and constitution of their country: conscious they were of the majority, knowing they were able to carry their point by fair means—I have always heard, cunning is the part of the weak; the strong are sure of their own power and would not use it—what need was there for the party to combine? was it necessary?—unquestionably not—they were able to effect their purposes by lawful means, and they knew it. Why then

should the majority join to keep out the English party the minority by all means, lawful or unlawful? these respectable men, brought up in a peaceable manner, cannot be supposed to have combined to do that by foul means, they could do by fair; to bring themselves into a law suit, its trouble, its expences and amercements, when they could gain their end without—such a confederacy was unnecessary, and they knew it was so. Is not this itself a volume upon the subject? Is it not sufficient to prove, that they did not enter into a confederacy, because it was totally unnecessary for them to do so? What evidence is there that they did? Is shewing that it was next to impossible that they could have used unlawful means, evidence of it? Let me say, if they had conspired, or combined, conspired it could not be, to keep out a man from being inspector, by all the means they could use for the purpose, it would not have been unlawful. If I shoot a man in the street, it would be right, that the law of the country should take away my life, because nothing justified me in taking the life of another; but if a midnight robber enter my house to injure me or my family, if I kill that man, it ceases to be murder and becomes justifiable homicide. Although in a time of quiet, it would have been wrong to have drawn Wagner from one part of the room to another, yet, when he endeavored to violate their rights, he justified a great resistance upon the part of those whom he was going to injure and they might turn him out by force, if they could not otherwise.

Let me ask you, what argument is there to prove, that they combined to use all means, lawful or unlawful, to prevent the introduction of English preaching? Allow me to say, that as it is the introduction of English preaching, they are said to have combined to prevent; any force, unless used, when preaching was about to be introduced, would not have been in consequence of such a combination. The charge is confined to their resisting by force, the introduction of English preaching: in such a case, they would resist all persons advocating the English, and who wished to convene for its establishment; and yet no one instance is attributed to them in which, when English preaching was to take place, they attempted to prevent it.

In the case of the shoemakers in New-York, there was an original paper they had signed; the agreement itself was in evidence, and it was fully proved there was such a paper. In the case of the journeymen shoemakers here, it was proved that such a paper existed. Where is the agreement in this case? Is it the address to the corporation? No; that is only a paper, addressed to a few persons, in which they say, we have agreed with one another; but there is no such agreement in evidence. Perhaps, gentlemen, it was a mere ideal say so, in the petition; or there is no evidence of such an agreement having been made between them; but there is reasonable evidence before you, that there never was such an agreement. How many witnesses have been examined in this case on the one side or the other? Perhaps, between forty and fifty—which of them ever saw any agreement on this subject? Not one

of them. Who said he was present at any? Not one. All there is in evidence concerning it, is a petition, in which they say, what I shall by and by call your attention to. But that petition is evidence, if evidence at all, of a thing before perpetrated and committed, and not of that which had been agreed to be done. Not one of the witnesses ever saw such an agreement, or knew any thing of it. What then is the meaning of this petition? It is palmed upon us, as a paper from which the most foul and criminal designs may be inferred; from which, the opposite party have a right to say, there was a determination and combination, by the sacrifice of blood and life, by the active expence of blood and treasure, to prevent the introduction of the English preaching; and absurd it was certainly when they could do it without it.—Where there is an improbability, gentlemen, the proof ought to be doubly strong. If a man should say, he had starved for two days, and should come, where there was some meat, and when he went away, the meat was gone; the presumption would be great, that he had taken it. But if he had come there, having his appetite fully satisfied and with victuals with him more palatable; it would be absurd to think he took it. When the presumption is absurd therefore, the evidence must be doubly strong; let us now see, if it is so.

Two things are to be shewn by the opposite side; that there was a determination to prevent by all means lawful and unlawful the English preaching; (these words lawful and unlawful are absolutely necessary) and it must be proved, that they endeavored to carry their purposes by unlawful means. Now let us look at the address. (*Reads the address.—Vide appendix.*)

I do not understand the German language, but must depend upon the meaning of the word attack. This is a determination to defend with their bodies and lives their worship against an attack.

In one sense of the word "attack," it is aggression, it is an injury suffered by the person attacked, and it is a trespass, or what is equivalent to it; and if they had said, they would defend the German worship, against any aggression, against any attack to introduce the English, there would have been no harm in saying so. Attack, may be of various kinds; it may be with force and arms, with force and violence; and therefore it was merely an engagement that they would act defensively, there was no impropriety; they had a right to defend themselves, against an attack, with force and violence, and to oppose with all their power the introduction of the English language by force. I do not know the idiom of the German language, but I do of the Latin; I know *totis viribus*, is in Latin, equivalent to "with all our power" in English. If a man say, *totis viribus*, he will resist; the literal meaning is not that he will resist by blood, or by force of arms; it is a common expression among lawyers at the bar "I will resist such an attempt *totis viribus*;" it is a common expression among statesmen. It is enough, that there are many idioms, in which we say, "we

will oppose with all our power," and it does not mean, with all our force, but a particular application of it.

The last sentence is the only one worthy of remark. I will merely call your attention to it, as the gentleman who follows me, is well acquainted with the German language and will be able more fully to expound it than I can—(*reads it.*)—Well now, gentlemen, where is the harm in that sentence? Let the most rigid critic dissect it: I will defy him to extract from it any evil intention. Supposing "body and life" to mean the worst it can, what is there appears in it to shew, that they conspired in unlawful measures, to prevent the majority from preaching in the English language? Nothing appears but a determination to support the corporation, chosen by the majority, in effecting the advancement and support of the divine German service. In supporting the German worship, they could not intend any thing unlawful or immoral, and therefore they pledged themselves to nothing unlawful or immoral.

This is a criminal prosecution, depending upon the meaning of words; words argue an intention, but intention must preponderate, even though the words are put to express it. Words are the covering by which the purposes of the heart are discovered; but the words may be improperly used. And yet if the intention of the heart appear, the words shall give way to the intention, and convey the signification which was intended by them. There was a time when *rogue* and *villain* applied to servants, and by them not any bad qualities were implied; they were formerly expressive of the condition in life, now they express the immoral disposition of man. As words are used in a variety of ways, they sometimes are used indifferently and improperly. A law was made, that whoever spilled blood in the streets of Rome should be punished with death; yet a surgeon having opened the vein of a person in the street who had fallen down in a fit, the intention prevailed over the words, and although it was within the words of the law, although it was exactly in the face of the law, that punished the drawing of blood in the street with death, yet it was decided, that the surgeon had not incurred the penalty.

The words are not to be considered as a critic would regard them; but they are to be given that meaning which the person who used them intended they should convey. To say that these men should know precisely the meaning of these words, is not to distinguish the ignorant from the learned, but punish them for being ignorant. We must now inquire, not what was even the common signification of the words, but, in what way did the men using them mean them. This happens every day; if I were to sell you my house in Chesnut street, west of the bank, and I had no other house than the one East of the bank, you would take that one by the grant. Do you suppose those who drew up the address had these dictionaries before them? No, gentlemen—they used the words as common men understand them, as they are understood in common acceptation; if they meant them innocently, it is no

matter whether the strict meaning was bad or not. If a man use the words "body and life" innocently, he ought not to be convicted because the strict meaning of the word carries guilt with it. With what intention did they use them in this case? We have examined three impartial men upon the signification of these words; do you think they have perverted the truth? Would they perjure themselves? What have they said upon these words? Let us turn to the explanation they have given. The first is Varrin; he says, "these words shew an attachment to a thing, they are used by the most sincere friends to each other in parting, the bride and bridegroom use these expressions towards each other." Upon being asked, if he would understand them as conveying a threat, he answered, "by no means, it is an innocent expression—in prayers it is used." Here is the testimony of a gentleman, which, on account of his language and manner is deserving it appears of credit, and what does he say? "The words are not understood in a bad sense." Why, gentlemen, is he not an host of evidence himself? Will the opposite party say, he does not understand the German language? Will they say, he is suborned and has made his words subservient to his will? They cannot say so—they cannot say but that he is worthy of the utmost credit. But, gentlemen, is he alone? No—Dr. Helmuth has also been examined; he was called to translate the paragraph. "The literal translation" says he, "should be with body and life—there are two sorts of expression, the one is by adding the preposition "by," as "*bey Leib und Leben*;" the other is, "*mit Leib und Leben*," as it is here, "*bey Leib und Leben*" refers to the person who is spoken to, and implies a sort of threat, but a threat that the mother to her children will give, who will say, "do not do that by body nor life"—sometimes the word body is used alone, sometimes both the words are used—the threat refers to the children, "you will suffer for it if you do it—*mit Leib und Leben* is an expression that refers to him that makes it; if there is a threat in it, it falls upon him that speaks—I take it they are used in a lawful sense." The next witness was Doct. Collin, and his explanation agrees with that of those gentlemen; he says, "the words do not imply any thing unlawful; I shall tell my idea;—it is the very same as the strong animated expressions, which we often find in political books, in parliament or in our congress—it signifies this, that we will defend our good cause with our life, if it be necessary; my impression is, that it never could relate to the present affray that happened—it is an expression very general among all people, religious and political."

Then, gentlemen, here are the explanations of three clergymen, respectable men, as to these words; they say, "body and life" is only an innocent expression, does not convey any threat, and is the declaration only of what the defendants would suffer for a good cause. It amounts then to this, it does not mean, that they would take the lives of others, but that rather than the English language should be introduced, they would lose their own lives. And a very great difference there is.

"By body and life" has the worst meaning; in, "mit body and life" there is no threat, it signifies what you yourself would suffer, rather than endure what you deprecate. Would the gentleman on the other side, say, that if these three gentlemen are wrong in their explanation, they do not understand it in the sense which they gave it? And if the defendants did understand it in the sense these three gentlemen did, they did not mean to convey a threat to any others, but merely to say, "so much do we love the German worship, so much do we deprecate the admission of the English worship, that we would suffer any deprivation, rather than it should be introduced.

I am not astonished, gentlemen, to see, that you are impatient at the unusual length of this trial—I am not surprised at it, I will therefore leave you upon what has been said, and the observations of the gentleman who is to succeed me. Upon the whole, I think it very improbable, that there was ever such an agreement as the prosecution attempt to prove; and if there was, neither by these words, "*mit Leib und Leben*," nor by the acts of the defendants, has it appeared, that they ever intended to carry into effect an improper purpose by unlawful means.—*Adjourned.*

WILLIAM RAWLE, Esq. *for the defendants.*

GENTLEMEN of the jury, if I could for a moment suppose that the spirit which instituted this prosecution was likely to be gratified by success, I should feel some anxiety in addressing you. When I hear the counsel for the prosecution tell you, that these defendants are indicted of an infamous crime; when I look into our law books and find, that conspiracy is laid down as such in those books; that the effect of a conviction is fine, imprisonment, and a certain portion of civil infamy as to the person convicted, who cannot be received while under that taint as a witness.

I am induced to look on those as not guilty of that crime, who are now brought before you. I see these fellow citizens of mine, of yours, the heads of families; men, upon whose daily exertion numbers depend for bread; who in every other situation in life maintain unspotted characters; I see these men in jeopardy, (on the ground industriously sought for the present purpose) of being torn from those families; of having those daily labors suspended; of being put in the work house, as one of the opposite witnesses said; stigmatized, unless a pardon be extended from the executive; rendered incompetent for any judicial purpose; when I see these would be the consequences of a conviction on the proceedings adopted; then I feel a degree of consolation, because I am satisfied as this attempt is attended with so much evil, in proportion as we can trace out its source and discover the motives that lead to it; in proportion as we unravel the whole plot; every step that we proceed, the acquittal of my clients becomes more certain. I wish you, gentlemen, strictly to decide upon the charge laid before you; to take care of confounding the charge in the indictment, with others that are distinct. You are to consider whether the defendants are guilty, if guilty at all, in manner and form as they stand indicted. With this previous impression upon your minds, I feel confident that I may intrust the case to you, with that attention to the evidence you are bound to administer.

If there was a regular charge presented to you, proceeding from a regular and proper source, the administration of the laws of our country, unimpelled by party if such was the case presented to you, in which there was nothing more than the customary form of prosecution; in which you would see the attorney general, as he usually does, stand alone; in which was manifest that his own good judgment carried on the prosecution; it would be absurd for me to present this view to you. But, the truth cannot be concealed; this prosecution was instituted by particular persons, to carry into effect particular views; and I can convince you, if not already convinced, that this is not the usual course; and that this prosecution is supported by a party, and not by the commonwealth, as indeed has already appeared in Mr. Binney's argument, when he was under the necessity of representing that they would be injured, unless the members of the German party would be prevented from succeeding in their combination. Why do you see the

attorney general, eminent for ability, not left to act alone ; but additional counsel, not paid by the commonwealth, employed ; one of the witnesses sitting by one of these assistant counsels, prompting him in questioning, instructing him in fact, and directing him what witnesses to call ; attending with the utmost assiduity and earnestness from the beginning to the end of this trial, and rendering every aid for the purpose of carrying the conviction ? Why did Mr. Binney think it necessary, to tell you what had been the former practice relative to the German party ? Why give a detail, of no kind of consequence as to the question of mere innocence or guilt ; but important, to shew to you the existence of a party (which one of these men was so disingenuous as to tell you he knew nothing of) but for the purpose of shewing, that there was an anxiety, warm and continued, not to convict Hœckley, Weckerle, Lehr, or any other of the fifty-nine respectable individuals who are brought before you, but because they knew, and are bound and compelled to acknowledge, that Hœckley, Weckerle, Mannhardt and every other individual, whose name is to be found on this indictment, stand opposed to their party, to the introduction of the English language in their mode of worship, and are determined to support, so far as their laws will carry them, their German worship ? Thus a truth too apparent to be denied—otherwise, permit me to ask, why at the conversation testified by Hyle, in which Busch, who has appeared before you as an unfortunate witness for the commonwealth, and Cope, also a person of the same character and description have they manfully avowed their views, and declared that they have endeavored to convert this petition into conspiracy, that it might terminate in the confinement of these people, and then, says Cope, “we will have the English preaching ?” And this, Cope has not ventured to contradict. This is the anticipated result. He does not say “we wish to punish crimes,” “that the laws if opposed,” must be vindicated, but “then we will have English preaching in the churches.” That those who instituted this prosecution have attempted to pervert the purposes of this tribunal, make it subservient to party views, and corrupt its channels, is too plain to be denied. I wish not to address your feelings, but I do wish you to proceed upon the plain and established principles of justice, and to make an application of those principles to my clients, which in any other case, other defendants would be entitled to. There are two rules which deserve the greatest attention ; one is that guilt must not be imputed but must be apparent ; the other is, that when an act admits of two interpretations, the party accused is entitled to that which is most favorable. And it never was, and never will be I trust in this country tolerated, that the criminal is supposed to have had his guilt established merely because he is accused ; and if the prosecutor can bring forward an act, innocent or not innocent, every thing is to be to the prejudice of the prisoner ; and every thing is to go against him merely because he is arraigned. There are countries in which to be accused and convicted are nearly the same, and

where even the advocate who would undertake to defend the prisoner, is happy to escape from punishment. Here, I thank heaven, the case is different for notwithstanding our present situation, not one of us, not one of you can tell how soon you may be brought forward on a charge like this ; to found a conviction you are to satisfy your minds of the fact of guilt ; and if a paper be brought forward, that can bear two interpretations, the jury cannot give it both, but are bound to consider it in the light most favorable for the prisoner.

Let us then in the outset, consider the charge, and endeavor to understand the nature, and the leading character of the offence imputed to us. Fifty-nine persons, beginning with Frederick Eberle, and concluding with John Harper, are indicted and charged, that they, on the twenty-sixth of December, conspired, &c. (*vide indictment*) by every means lawful and unlawful, to prevent the introduction of any other language into the church." This is the charge, whether there is sufficient foundation for it, you are to judge ; when I was first applied to, I was furnished with a copy of the petition to the vestry ; some weeks afterwards when the copy of the indictment was brought to me I was startled—I thought if my clients had bound themselves in the terms imputed to them, by all means lawful and unlawful, &c. I could not support them ; anxiously I examined the copy as soon as possible, and I then felt not the same impulse of surprise, for at first my motion was mingled with regret, and afterwards with indignation, that the indictment should introduce words not found in the paper. When we retire and read calmly and with candor, this indictment, it does present an idea, that in this petition is not given and no where exists. If the indictment had been presented on the general ground of conspiring and been manifested by acts, the case would have been different ; but there is an insertion of the very words that are in a part of that paper ; to wit, that they bound themselves with body and life to support, &c.—and then as it were, pursuing the same spirit as runs throughout that paper, it goes on and represents the defendants as having bound themselves in this manner before their God, and solemnly to each other, by all means lawful and unlawful, to support the German divine worship, &c.—Observe then, gentlemen, this is not to be lightly passed over, keep it in mind, it forms part of the charge upon which this court will have to pass judgment ; it appears to you, that they have combined, not merely to repel with body and life, the introduction of the English worship, but to oppose it by every means, lawful and unlawful. If ever a verdict could come forward to this court, against these defendants, it would be easy for them to appeal to this paper to shew none of these words exist, which are charged in the indictment ; but we cannot go from the record, and here, if these defendants shall be convicted by a verdict of their fellow-citizens, we can go no further than to compare the verdict with the indictment. After giving this aspect to the case, they go on to give the effect of the

combination, they say, "that in pursuance of this unlawful combination, ———— &c." Here then is the first charge you find, made in direct terms of the conspiracy and combination in the face of justice, and against the laws of our country, to prevent by all means lawful or unlawful the introduction of English preaching. Attributing to all the defendants and to each of them, the riot on the election day, in pursuance of the unlawful combination, &c. In the first part of this indictment then, you see the riot, as an essential part of the charge, is laid as in execution of the unlawful conspiracy; but as, in establishing this, the prosecution might fail, they proceed in the next count of the indictment, to lay the naked act of conspiracy, without a confirmation of it by acts. The description of the conspiracy in this count, corresponds with that which goes before. (*Reads the second count of the indictment.*) The second of these counts you find, contains the mere act of conspiracy, disunited with any act subsequently perpetrated; but the mere assembling together and conspiring, is the foundation of the charge upon which your verdict is requested. It will tend to simplify my remarks, to have these charges separately presented to your view, and examine the nature of each charge, and how far any evidence supports it.

A riot, an assault and battery, and a combination and conspiring together, form the first of these charges; but the riot is not laid separately from the conspiracy; but as the execution of the conspiracy; of this design which is laid in the indictment, as the leading design of the combination; and as carrying into effect the agreement to prevent by unlawful means the introduction of the English language.

I need not refer to books for the purpose of stating what is the meaning of riot. Riot is a turbulent act of an unlawful nature, committed by three or more persons. The law knows no riot; no court and jury can determine upon any act called a riot, unless there have been three persons concerned in it.—This then is a ground not disputed; but observe, gentlemen, I am not endeavoring to fly the charge, upon the ground of the riot not being properly laid; I shall answer the whole charge as fully as I can, by shewing you, that it, in no form, in no shape, has been supported by the prosecution.

The riot on the election day, is the first of these charges. By confining my remarks, to what took place on the election day; I will reserve for your future consideration, what took place at the other meetings at the school houses, and other places, which will be seen more fully by connecting their consideration, with the essential part of the charge. If connected together, it might be said, I was endeavoring to withdraw your attention from the separate parts of the case; for the purpose of shewing what was the meaning of those who signed that paper, they shall have the whole benefit of their evidence on the other side, but for the sake of perspicuity, I shall at present confine my views, to the language of the indictment.

On the election day, there defendants are charged, with having raised a great noise.

Ever since the establishment of this congregation, it has been composed of natives or descendants from natives of that country to whose industrious, frugal habits, Pennsylvania is in no small degree indebted for its prosperity; ever since the establishment of this congregation, which was in 1765, an annual election has been held for the purpose of choosing the officers of the corporation; this election is provided for by the charters, in such a manner as the proprietary at first, and the legislature in the second instance, thought most conducive to the prosperity of that body; under which it acted until the sixth of January last, when an evil Spirit arose to disturb them in the appearance of the English party. The congregation by these annual elections constitute, as you have seen, the corporation, not composed of the congregation at large, but of those persons who shall be annually chosen to that office; the members of the congregation are the electors, those who are to determine in what manner they will exercise their right of suffrage, granting to them in the first instance by the charter from the proprietaries, and in the second from the legislature of Pennsylvania; in both of which language has been adopted to the purpose of saving to them the power of election, (*Vide the charters.*) So it appears, they shall be entitled to nominate or appoint any person or persons to be chosen, &c.—meaning unquestionably the right of appointing them who are to be voted for as vestry men or church wardens. In these charters then is the provision which gives the members of the congregation a right of free, unbiassed suffrage; evident as to the manner in which the regulation shall be conducted with respect to the appointment of inspectors. There can be no doubt, that in order to render all these regulations consistent only the votes of those persons should be received who are entitled to a participation in the right of suffrage; hence it follows as in the great community of which we are all members, so in this society, there must be some person appointed to receive tickets and decide upon their being presented, whether the persons offering them are entitled to vote; and if the charter is silent upon the subject, it follows, there must be some power somewhere to appoint inspectors. The congregation have not said, “this is a power we hold in our hands;” what time have they said; “it will be most convenient for one of our officers to appoint these inspectors? Never—the corporation has; and I submit to his Honor, that we find a bye-law of 1805, which vested in the president of the corporation the power of appointment; this was never repealed, nay, farther, until January 1816, we never find it objected to; but until that time it was considered as a convenient exertion of the power vested in the corporation. It is not to be inquired of in this collateral way; the question before you is, whether the defendants were guilty of the riot and combination charged, and not whether the members then appointed, were legally appointed; this is to be discussed at a future day in another case; in a

case, allow me to observe, in which we shall meet our opponents upon more equal grounds; in that case we will not be as we are now, at the mercy of those who have indicted us, and of those, as avowed in the opening, who are most active in carrying on this prosecution; in that case we will not have our mouths shut, but having overcome that difficulty under which we now labor, we shall have the power of shewing their Honors, when sitting in bank, the whole of the proceedings on the day of election; and the question of the validity of the bye-law of 1805, will then be properly examined. It is sufficient for us now to say, that this is a bye-law, the existence of which was well known and for the term of ten years at least, was acted upon; this bye-law was supposed to vest a constitutional power in the president of the corporation, and never until the active leader of the present prosecution, George Witman, whom I shall treat through the whole of my argument as the culpable author of the whole disturbance of that day, created a doubt in the minds of some of the members, was it ever thought it was not a constitutional power. Any, gentlemen, is it not a constitutional power? Is the act of the legislature final? Those who oppose us know, that it is possible, that the person who votes may have a right of choosing the inspector, and yet if the person that took the vote was appointed by the chairman, it was exactly the same. The supreme authority, the supreme court of this commonwealth has a power to inquire whether the intentions of the charter are fulfilled; and whether the inspectors were appointed by the congregation, or by the corporation, or by an individual, is precisely the same; it interferes with no provision of this act of assembly, it interferes with no right of the congregation for the president to appoint the inspectors at any time or at any place. There is now a new effort made, and in pursuance of the same system of surprise which actuated the motion of Witman, has on this occasion been introduced against us after the testimony was closed; after it would have been irregular to have adduced any thing more, we hear there was no bye-law at all; then we hear for the first time, doubts whether the bye-law was regularly passed; all these considerations, I say with perfect confidence, are foreign to the present controversy. It is sufficient for me to shew in the records of this congregation this bye-law is entered, that the congregation thought it a valid bye-law; that those who opposed it on the sixth of January, 1816, had always treated it as valid, and under which the congregation and corporation had uniformly acted ever since it was passed. It is true, some of the witnesses say, the inspectors were appointed in the corporation; some say, out of the corporation. Gentlemen, we all know the nature of contested elections; we know it was rather the desire of the congregation, that a respectable man should devote so much of his time in attending to their business. One of the witnesses says, "it was talked of sometime before hand, and sometimes, it was said, such men would not serve, and sometimes that they would serve, and the next day the gentlemen were told"—Busch, himself, acknowledged, "he never had known an instance of the appoint-

ment by the congregation. It is sufficient then for our purpose to know, that those on the part of the prosecution considered themselves as acting under it, and had never complained of it. As to Witman, what was the conduct of this person at the election? He proposed, they should appoint certain persons as inspectors; one of the members says, "are you the president;" another reminded him of the bye-law; he persisted; when he had nominated the inspectors, he had previously asked Honey, if he would put the question he proposed, whose answer was, "if it be in order; he himself put the question. This conduct carries with it the inference, that Witman had very little knowledge of the ordinances and fundamental articles of his own corporation, otherwise he would have seen, that none of the bye-laws can be repealed, but with the consent of at least two thirds of the congregation; that the congregation must be notified and assembled to repeal, although the corporation has the power to make a bye-law. To repeal a bye-law, already passed, appeared to the officers of the corporation a matter of too much importance to be intrusted to the corporation alone; they must assemble and have an opportunity of acting in concert with the congregation. He evinced at the time he moved, that bye-law should be repealed, his ignorance of the fundamental articles of the corporation; however, it was put to vote, and whether there was a majority for it, or against it, or whether it was carried in the negative by the casting vote of the president alone, is totally immaterial. By Link's testimony, it appears there were nine for it, to nine against it; as Honey ultimately explained it, he had arisen at first to vote simply as a member of the corporation—then he gave his vote as a member of the corporation; they do not pretend to say, they would have been successful, if Honey had not voted; or what would have been the result. Witman never mentions, that this bye-law was repealed by a motion he made;—no; it appears, upon the ground he took, or appears to have taken, he presented a question upon general principles to the attorney general and took from him the opinion, that the congregation had a right to appoint, and not that the law should be repealed; that was not the question.

We proceed to the morning of the sixth of January, a time when indubitably, the strength on both sides, was expected to be brought forth in the course of the day; where, at the time the German party, who had all along acted upon the supposition of the president, and could not have any motive for appearing so early on the ground, these, who were of the opposite party and knew of Witman's intended motion, were ready to take their stand, to support it. When according to the usual practice, the accounts were read by their treasurer, Mr. Long and Dr. Helmuth, concerning whose character, eulogium might be exhausted, was addressing the people; when Honey, who had previously made his nomination, and communicated it to the two persons, upon whom his choice had fallen, and obtained from one of them his reluctant consent, had left a paper upon his book, with his spectacles upon it, and had

turned round to see the sexton of the church; Witman cast his eyes upon the paper, shook his head; and one of the members said he shook his head because he did not like the men. This witness could have had no suspicion, that Witman intended to propose another course; but says Herpel, "I told my neighbor it was because he did not like the men that he shook his head. At this moment Witman springs upon the chair and makes his motion. Now you see what at once infused a spirit of disturbance which continued through the whole of that proceeding. No matter whether he begins, as stated by Bealer, with the words "no, no;" he at once begins, in a manner, to drown all argument, to make his motion by using the language of the attorney general, and making his opinions subservient to his attempt. What is it, he declares to them?—"Gentlemen, I have the opinion of the highest law officer in this state, of Mr. Jared Ingersoll, that the congregation have the right to appoint the inspectors;" and then he proceeds, "those who are in favor of it, say I, and those against it, No. Thus blending together the questions and producing tumult and disorder; what could be the meaning of those who would say no? Not a mere objection to the names, but an objection to the proceedings. Yes and no, answers in English and German, much noise and confusion, are the certain consequences of this motion of Witman. If they were to endeavor to do this, they could not take a better mode to disturb that meeting, and if this is the gentleman who has set on foot this prosecution, if he at least, was the leading cause of it, for at this instance it was done; it was in consequence of his act, that the disturbance arose in that assembly. Gentlemen of the jury, Witman says, "I thought, there was a great majority," says Busch, "I thought there was more than two to one." Is it possible, give Witman and his party all the credit they are entitled to, for concealing their intentions, and taking the others by surprise, take it to yourselves; was it possible to ascertain that there were two to one, or even a majority? If so, why was not Wagner installed into his office? How should the reputed minority succeed in keeping out his chosen officer? How did they, opposed by this triumphant party, succeed in keeping him out. I refer you to Geyer's testimony. How does it happen that he does not assert that there was a decided majority in favor of Wagner and himself? How could it happen that this contemptible minority prevented Wagner from taking his seat. I venture to say, there was no majority; and I refer to the final result of the election, in which without force or prevention of the English votes, there was a majority for the Germans. What could have induced them to use force, when they had the majority towards the English? And if no force had been used, Wagner and every one who endeavored to put him in; he was not entitled to take his place as I have shewn you as an inspector. Whether you are to believe Witman, who tells you, that when Wagner got in, his clothes were torn, and he exhausted, or Lehr, who said he spoke to him with a smile, is not of much consequence. I grant that

their views were incorrect on both sides, the views on the part of the English were as wrong as upon the part of the Germans; because I say the Germans were endeavoring to support that which had long been supported by the congregation, the by-laws; but the attempt of Witman was with a sweeping hand to establish its invalidity, and introduce this disorder. Then so far as we have advanced, this degree of disorder is imputable equally as to the result, starting originally from Witman's motion; and for whose design, it could not have existed for a moment, and would not have taken place at all.

I need not spend time in arguing the positions of law; you will find on examination, this day is divisible into three points of time; when there appears the most distant semblance of a riot, and which I can satisfy your minds, proceeded from the English party, by which the passions of the Germans were endeavored, and intended to be set in motion, for I can convince you, there had been on the one side an effervescence of feeling, carried further perhaps than strict propriety; and on the other hand, with all that evenness of temper exhibited, there was frequent provocation given to the others, and an attempt to undermine, lest they could not attain their objects by force; and a hope to fix upon some of the witnesses before you, something that could give a foundation for subsequent judicial punishment. We fix no attempt upon Witman of that kind.

Wagner was finally allowed to go within the enclosure, although he was defeated, and it appears there did not exist towards Wagner any attempt to injure him; he remained there so long as he thought proper during the election. Witman has now a new part to play; he now takes a stand in such a position that it was impossible the inspectors could conveniently do their duty. I am not going to deny that every member of the congregation had a right to place himself as near as he conveniently could to the inspectors to see who gave their votes, and what votes were admitted; but let every thing be conducted with good order; if he had a right to place himself in such a manner in the front of the enclosure, what is the result? Is not the election carried on most improperly? Is it not subject to inconvenience, illegal and improper; for if he had a right to fix himself there, had not every member of the congregation an equal right? He, as a member of the corporation, was now on a level with any other member of the congregation; there the corporation had no functions to perform; he was no more than the humblest member, who on a Sunday afternoon should go to the church to hear the word of God. He was frequently solicited to fall back a little, and told, that he incommoded the voters; at least Hœckley took the inkstand from him, as he ought to have done sooner; this is the only overt act by Hœckley; this is one of the riotous acts on the part of Hœckley, formally laid in the indictment. Was Witman then correct in staying there? Had he any right—was he not on ground he occupied illegally? Most certainly—under these circumstances then, is it

a matter of doubt that his conduct excited the second of these disturbances; we trace to him the riot, if any breach of tranquillity occurred throughout the day. The expression, "turn out the Irishman." I give the gentleman the advantage to translate; the term must have been intended to apply to any body who thus interrupted the exercise of that suffrage, granted them by the act of assembly. Then gentlemen, Witman continues making his memorandums, and there commences the second of these imputed outrages. Loos, whether indicted or not, I cannot say, dissatisfied with his conduct, considering it as an invasion of their rights, snatched the paper from his hand. Here then is another tumult originating with Witman; here then, Lewis is to be seized for taking the paper from Witman; a tumult ensues; those who had thought Witman was invading their rights, would naturally interfere and support Lewis. If Lewis, say they, has "offended, he certainly is ready to appear; but you are not by the direction of the magistrate, to carry off the individual, who has on any occasion, manifested his sense of the improper conduct of the other." Witman is not at any time ordered by Geyer, to retire from his seat and leave the election free to the voters; but Lewis, whose officiousness was not more than equal to Witman's, was immediately noticed, not with a view of finally committing him, that cannot be imputed; but to prevent the continuance of the interruption, Lewis is to be seized; and thence arose the tumult. And what is the consequence? You find, young Riley, the friend of Vanderslice, who wished to know what he was doing, lays his hand gently on Vanderslice's arm; and instantly in the tumult and excitement of passion, which was produced by the first actual invasion of the rights of these people, he turns round and seizes this young man, drags him out into the street, and knocks him down in the snow. Have they brought forward Vanderslice to contradict Riley? No. Mr. Binney attempts to ridicule this gentle laying on of the hands; but why have they not brought Vanderslice forward, to prove that it was otherwise? They have not accounted for his absence; but Vanderslice is convinced, that what he done was wrong; the tears start in his eyes, he desires a reconciliation, and Riley with a goodness of heart that appears natural to him, in opposition to what he was advised to by some of the German party, meets him with open arms, and they are as good friends as ever. Will any one say this not was the consequence of the act of Riley or Lewis? No, gentlemen, it is impossible. It is evident that it was in consequence of Witman's improper act. But the riot does not stop here: blood, you have been told, the German party threatened to draw; blood from the English party, or by those who acted under their directions, has flowed, and the only blood that has flowed, was from the act of the constable, who acted under the direction of the magistrate, who perverted his duty. Spiess in a plain and unaffected manner tells you, he also laid his hand, as a matter of enquiry, to attract the attention of Vanderslice, upon his arm. Vanderslice is not brought

forward to contradict him. Mr. Binney says, this is another light way of putting the hand upon the shoulder. It was so, and not one of the witnesses has been brought forward to swear that either Spiess or Riley were guilty of untruth. What was the conduct of Vanderslice? He draws a short weapon from his pocket, an emblem of his office, and which he ought to have shewn in the outset; shew us this weapon and we know who you are; but he did not. Spiess did not know who he was; he draws it out, and gives a severe blow to Spiess, directly under the eye, and more by good fortune than perhaps any thing else, it happened that it did not cause that simple man the loss of his eye. Why has there not been something adduced to induce you to think, that it was impressed upon the mind of Vanderslice, that Spiess was going to beat or use violence towards him? And thus, gentlemen, Spiess maimed, and the blood flowing from him, he retired to the school house, to have his wound in some degree attended to. He afterwards goes down to the mayor. Mr. Wharton refers him to a subsequent day; and I beg to refer to the day he appeared before Mr. Wharton, to introduce an observation. Although Spiess's face was so bad, that he was ashamed to go into the street, he applied to the mayor for a warrant, and made his complaint. At the examination, Vanderslice says, that he had struck him, because was prevented in doing his duty. Ripberger and Cope came forward and said, such was the conduct of the German party, they could not let the English party vote, and of course, this was a natural defence of their rights. Spiess stood alone without any friend that we know of to confirm what he said; there was Cope, whose influence is known, and Ripberger, endeavoring to make an impression that they were prevented from giving in their votes. Have they shewn you, gentlemen, that by force or intimidation, one single man was prevented from voting? How then could Cope represent this so falsity to the mayor? How could Ripberger forget himself so much as to make this representation, when not a single vote was prevented by the German party, in any shape whatever. This tumult was owing to their party, and you have not had any thing but mere individual acts shewn to you, which are to be decided in another court, and with which we have nothing to do.

The transaction with Mills is the next to be noticed. Mills, who it seems, acted very much as an uninterested spectator, was sitting with his back to a window, this was in the afternoon, when there was perhaps less tumult than during any other part of the day, observing what was going on. A window behind him was broken, we know not how. In consequence of his gestures, or something we know not what, a person came forward and addressed him in the German language; a man behind him, told him he was abusing him. Who was this man? Was it one of the German party?—Was it one of the people, opposed to the constable's being there, who were not desirous of seeing them there, and wished to have them removed? Or was it one of the English party, who was again

desirous of seeing riot and confusion? I leave you to answer the question.—But was it a consequence of the man's coming forward and telling him in German, that he as a constable, had no business there, that he should knock him down? Some say, he fell against the bench, others say, he only stumbled; but there is no person who particularises, who gave the constable this blow; yet Mr. Binney, with a sort of poetic fancy, conjectures it was Kohler, the Saxton; why he should be supposed to have given it I cannot tell; that he said any thing to support the idea, that he was the man who struck the constable, is beyond my knowledge (*vide Kohler's testimony.*) Who was this man they took by the collar into the street? "There is no occasion to ascertain who the individuals are, what their names are;" as Binny says, "our object is to found a conspiracy; our object is to shew acts, individual acts, and then the evidence against one, is evidence against all, and will require a verdict against all." You will, gentlemen, I hope, examine for yourselves, and inquire into the fact; put yourselves in the situation of Mills, if you were sitting in the window, and you were addressed in German by a person, who, you were told, was abusing you, would not your passions be excited? Thus, you will be led to determine whether Mills was not in an irritation in consequence of the information given to him; and from the suggestion that he was abusing him, may have said something that he cannot now recollect, and which if remembered, I am perfectly willing to admit that he would testify. This disturbance, then gentlemen, did not proceed from the German party; it was from the English party who brought officers there, to punish offences in which their's were not included; and it would be proper to call Mr. Geyer to answer, on an inquiry into his judicial proceedings on that day, whether they were impartial. "Some of the witnesses," says Mr. Binney, "assert that the election was, generally speaking, peaceable;" and he asks you, how you can reconcile it with the other testimony. Gentlemen of the jury, I have endeavored to shew you, that there were three acts, divisible in their nature, to be inquired into, whether the riot is to be considered connected with the conspiracy; or whether it is to be considered as arising from this conspiracy;—independent of these acts of individual outrage, it was a peaceable election. What do the witnesses for the prosecution say? Are we to believe them? Will these gentlemen take their own witnesses as vehicles of truth. A Mr. Kline, was produced by them, we asked him, how the election was conducted; his answer was, "it was a little *combustling*, but not more than usual;" he was there at that time of day when the tumult in consequence of Witman's acts had subsided. Krebs tells you, he was not disturbed; Charles Eberle is brought forward, who certainly appears to have given his evidence with much precision; he said, according to all the notes, taken of his evidence," the gentlemen said, as I came in, "if the Irish come on so, it will do very well." This he tells you, was all he thought worthy of notice. If the witnesses are thus

found to correspond, I am justified in believing that they are to be credited to whom I referred, and we establish that every thing was calm and orderly, except that appearance of irritation in consequence of the ebullition of those feelings which the ideas of being deprived of their rights would naturally excite. Link tells you, it was quiet during the quarter of an hour, when he stood on the election ground. Miller says, "it was quiet while he was there, except during the time of Riley's bustle." Tackman, when asked, said, "it was all quiet, except Spiess's affair." Take those individual affairs which rose and fell with the English party, and it was as orderly an election and as peaceable as any that had ever been held before us. Lehr tells you, that after Witman's affair, it was all quiet. Here are five witnesses who all concur in representing it as a peaceable election. No man was deterred from giving his vote; there was nothing like a riot which the gentlemen must establish before they can convict us upon this indictment. When Busch was of so timorous composition, that when he was sent in with the petition, was terrified by the sight of a small man, with a huge cane. Are we to suppose he was so courageous as to go in the midst of this post of danger and give his vote; and *a priori* are we to suppose that the proceedings of the German party were violent merely because there was beer and ham provided, and a committee of vigilance appointed? A more flimsy argument never was made. Has it not always been the custom of your elections that each party should appoint these committees of vigilance? Do you not know that the persons appointing these committees, are in the habit of calling to the young men to rally under the different symbols of party, which they had erected? Was it ever supposed by those defeated; did it ever enter into their minds, that they could have the other party indicted, and the election set aside, because they combined to carry it? The argument is too absurd to be pressed upon.

The committee of vigilance were appointed to collect votes. Bealer tells you, that he was appointed to call upon every member, who had a right to vote, and remind them, "that this is the election day, and you are called upon to vote," and when there was infirmity, to bring them to the poll, and when they had arrived there to keep the boys off, that they might not be prevented. He was asked, if he did not intoxicate them; and this has not been pretended, except in the flipant language of Wagner, who says, they were intoxicated, either with liquor, or with anger. He was right to give them such refreshment as was provided by the party; and there were only two barrels of beer for five hundred voters for a whole day, beginning at nine o'clock in the morning, and ending at eight in the evening. There was some wine also paid for by Bealer, and I give him credit for doing this as a poor man, without calling upon the wealthy for contribution. There has been a story also, of a man in the market, who sold his "garlicky sausages," which no body else would buy; and when Lehr was wet by the water, used to extinguish the fire, he, as a precautionary

measure, drank some of the wine ; and when he was asked, " did you not give some to the voters ? " " yes," said he, to an old man from the neck, Mr. Hoffman." I would ask Mr. Binney whether it can be expected, that those who serve the people all day, are to do it like a Roman Catholic in lent, without taking a single particle of nourishment. No, no, gentlemen, this would not be the course to pursue towards those employed in the public business. Have you not then evidence of some slight misrepresentation upon the party of George Witman ? It was something similar to that of their first witness, Busch, who came forward to give you as a sort of illustration of party views, a detail of the whole facts ; and when he told you of Mannhardt's coming up and being introduced with an outcry of, " here comes our captain general, here comes our God. Busch is proved, by all the witnesses to be himself the *man*, who uttered these words of irritation, calculated to excite whatever there was of anger and indignation in the party to whom he was opposed, that the party to which Mannhardt belonged might be induced to resent it and thus give an impression on your minds against them ; they did not do so, they took no notice of it ; all the witnesses declare, it was Busch, who cried, " here comes the German's head man, their captain general ; " and when Mannhardt was going away ; " there goes the German's Lord God ; " this was certainly not such conduct as could preserve the peace. Miller says, he is not sure who it was, but some one cried out, there goes their Lord God ; but this man who was sworn to tell the whole truth, not only secreted that which he had said himself, but represented it to have been said by others. Mr. Busch is supported by nobody but Mechlin, who says, he *thinks*, he heard some of the Germans, not designating when, cry out, " here comes our captain." In the bustle of that day, Mechlin may have misunderstood that which was heard, for you seldom find a man so base as to wilfully be guilty of perjury ; but at such a time when they were conscious that all that was done was to be brought against them ; at a religious meeting, for religious purposes, it cannot be supposed they could have said it. Taking the word " Saviour " literally, from what peril did Mannhardt ever save them ? By that time their majority must have been perfectly well known ; every man could tell from the appearance of the countenance, which way the current run ; and at the time, Mannhardt came forward to vote, no man could have doubted, that their election was secure ; he could not then have saved them from any thing. They are not in one minute to arrogate power to themselves, yet they are supposed to act at one moment as if they were the most powerful, and at another, as a people in the depth of despair, looking up to Mannhardt as their Saviour. What, was Mannhardt the butt of their party ? It would be so inferred from these expressions, if they could be attributed to the Germans. Geyer himself says, " a person who calls himself Mannhardt," a manner in which no individual can be justified in speaking of another, especially one who, as it has appeared, was not only a learned man,

but also a religious and pious one; and who without taking notice of the individual who had spoken so blasphemously and insultingly of him, calmly and coolly proceeds to give his vote. Mechlin represents Mannhardt, when going, as followed by a train drawn up in Indian file, he goes further, he says, not only was he followed by a train, but they marked time, keeping the motion with the foot, shewing a willingness to advance. This sergeants guard, as he represents those following Mannhardt, it occurred to me at the time, and I could not help whispering it to my colleague, we are indebted to him for not making it a regiment or brigade. We deny, however, the truth of his statement; we say, that Mannhardt came with a single companion, and to prove our assertion, we refer you to the testimony of Dreer, to that of Bealer, and to that of Oberthier particularly, and youth we know, are apt to pay attention to these trivial incidents; we leave it to them to prove otherwise, and confidently assert that Mannhardt came without any but one companion, gave in his vote coolly, did not return any reflection thrown out against him, did his duty and retired. We are told, he retired to the beer houses, where we find him, when there was no liquor, handing out money to get drink. On the other side they have supposed that this circumstance was criminal, but when examined into it, appears to be one of the most innocent nature. The evidence of a person in the district court in the case, of the United States, and Baker and others was endeavored to be impeached, because the prisoners at the bar had given him a sum of money, and told him, to make use of it; the inference was that the witness was perjured, but we prove that he had given him a small note to get some segars for him. It is said on this occasion, "here is a man suborned for the purpose of bribing others?" And when Kugler is examined it comes out, that it was merely a part payment of what he had charged for the use of his sleigh, and what he could have got for it, if he had taken a party of young gentlemen and ladies to Frankford to a ball.

Let me call your attention, gentlemen, to such acts, upon that day as are in proof in relation to any one of the individual members before you. The first person is my old and respected friend Mr. Hœckley; what has he done? The only act committed by him, was taking the ink-stand from Witman; and allow me to ask if any one of you would not have taken your own ink-stand from a man who was using it without your liberty, and preventing you from doing your duty.—It cannot be construed as an improper act in Hœckley. The next person charged is Mannhardt; I would ask, what has he done to constitute a riot on that day? If he did approach to the enclosure at the head of a sergeant's guard—if he did give a dollar to Kugler as a bribe, which he did not; you have the whole extent of his offending, and no matter, in what light it be viewed, it cannot be considered a riot nor bring him within the charge; but he did not go at the head of any thing like a sergeant's guard, and the other circumstance has been perfectly explained. I have thus gone through the whole of those who did any thing what-

ever on that day. The next is Weckerle: is he proved to have lifted his finger even during the whole of the election. All that he appears to have done was simply this; he told Ripberger, that no constable had a right to be there; and he said to Vanderslice, "why do you use this man so?" Riley testifies to the same expression and this is all that he could have done. This man says, "Cope," whose Christian intention of sending these men to the work-house, I hope you will not forget, addressed Mr. Weckerle, calling him *Cooney* Weckerle; but does not testify that any thing was said by Weckerle to him that day; that which Weckerle said to him was on a subsequent day, in reference to a proceeding in the mayor's court. He only said at the election, what I will say and take the chance of an indictment in saying, that the constables had no right there, it was an improper exercise of the power given to the magistrate. Christian Schmidt, whose warm manner is in evidence to you, and allow me to observe, that some men are naturally much more warm and fervid than others, and, in an examination of this kind, this embracing different characters, this is to be considered in viewing all the acts and expressions of the individual; and a man of his warm temperament would not mean more, when speaking with earnestness, than if the words he used were put in the mouth of the cool and temperate Witman. Mechlin tells us, that he said, that a German brother was in distress and ought to be protected; saying this, is not to be considered as a riot—saying this, was only an expression of the opinion also indulged by many others, that they ought to protect those who were unjustly assailed; and when a man was unjustly carried from the election ground, it would certainly operate to diminish and weaken that party; they had a right, if not by the use of unlawful means, to protect the man—and you find that no act was done by him in pursuance of his opinion—you do not find, that he did interfere in any way; this was the language of the moment, and whether it was carried farther, Mechlin leaves you in doubt, and no other witness goes further. Was Schwartz guilty of any act which cannot be defended; how shall I defend him? It is proved to you that he had one of the tickets in his hands, and the American eagle in his hat, and he said to old Mr. Cope, "only you stay a little longer and you will get what you deserve;" having previously used some indecent expression, relative to the badge in his hat. Whether it was right or not, gentlemen, that he should keep his opinion concealed, and his ticket concealed, and to give up the privilege granted him by the charter, it cannot be considered as an offence cognizable to the laws, unless you can say, that the exhibition of this ticket produced disorder; unless you can say, that if Witman had not made his motion, there would have been a riot, in consequence of a display of these badges, you cannot attribute any harm to Schwartz's exhibiting that ticket. But did he move; he said to Ripberger, that he had been in many an affray and would see that out—I have not a doubt that he did so, that he remained on the ground until the close of the election; but will this convict him of riot, without

shewing, that there was some act, some exertion of physical strength in an unlawful contest; unless some such acts are proved to you, it is absurd to say, that Schwartz is to be convicted on this indictment, merely for the use of such terms as these. Koon, it is in proof by Ripberger, was one of those who were concerned in the attempt to prevent Wagner from getting over the railing; and also was guilty of the unpardonable crime of having the eagle in his hat. With respect to the eagle, I leave him on the same ground, that I have with safety, I believe, left Schwartz; no man will say, that on this account they ought to have been indicted. Flegler is made to say in consequence of his being in a sort of irritation, when Cope asked him for a pinch of snuff, speaking with dissatisfaction, "blood shall flow before you shall have your ends answered." Cope said to him, "old daddy, you have one foot in the grave, do you say blood shall flow; "yes," said the mumbling old man, "blood shall flow" before your ends are answered." If Cope was afraid of injury to his person, the laws would have exerted themselves to compel them of whom he was afraid, to give security for good behavior; but old Flegler, when the election was most closed, with the certain conviction, that the election was in their favor, at that time speaking of blood flowing, was a proof of his dotage, but not of crime: it would be absurd to convict him on account of this expression, unaccompanied by any act. Christian John's, is referred to by Burkhardt, as saying, "they had plenty of beer and wine and victuals to eat, and fared well." These gentlemen, are all the acts, I can collect, performed by the German party, now let us examine what was done by the other party, and I say, and I shall support it, that if Geyer, who was one of their witnesses on the other side, had exerted himself as he ought to have done, impartially, there were other persons who ought to have been bound over as creating this tumult. I will give you their names, that you may be satisfied that the riot arose from these persons, and how it occurred. I present to your view first of all, Witman, he is himself a leader in the riot; if he had been like the other members of the corporation, quiet on that day, and had contented himself, if he had doubt of the bye-law, the validity of which he confessed by moving for its repeal, and intended to have a judicial inquiry into it, all would have been orderly and peaceable; but he introduced confusion, by taking the vote for the repeal of that bye-law, which it was his business, as the other gentlemen of the corporation did, to submit to. He ought to have been bound over to answer for the disturbance, consequent upon his motion. Wagner is the next person with whom a riot commenced and plainly shewed, that there was a co-incidence and co-operation in the English party; and Mr. John Long is the third person who ought to have been taken notice of. Mr. Reisch endeavored to prevent Wagner from getting within the railing, by putting his hand between him and it, on the rail. What does Long do? He endeavored to benumb his hand; he struck him as hard as he could, repeatedly, to make him let go his hold. Is he brought forward and charged with a riot, when he was called upon, to take a part of it,

not called upon by Geyer, to assist him, or by the constable to aid him, he comes forward as a volunteer, in order to dispel Reisch, to prevent the success of his opposition to the introduction of Wagner within the railing; thus is the evidence respecting this man distinctly given. It is given in evidence by Riley and not contradicted, that Schleif knocked Scivick down. What offence had he committed? Is this conduct consistent with a desire of peace? Is it consistent with order;—and are these the men that come forward to appeal to the laws of their country in order to convict these men of a riot? Where was Geyer then? Was he to see this man knocked on the floor, unnoticed, because he is one of the English party? No, gentlemen, this won't do. The next is Uhler, who according to the testimony given to you by Miller, is found to lay hold of a man, (described by the witness as an old man,) by the collar, and so far as it appears, no other offence had been committed by Bohle, than simply the expression of an opinion, that he thought no constables had any business there. Now then I ask, by what right is Uhler to take hold of men by the collar, for simply expressing their opinions; and assaulting with little credit to himself, an old man who had merely divulged an opinion perfectly innocent, and which any man would subscribe to, that for the constables to come there to disturb the members was not proper, and an opinion perfectly unobjectionable. "Did he strike you," says Miller to him; "no," said he, I did not strike him. No, but you did that which amounted to an assault, and which goes much further than the acts imputed to Brenecker or Schwartz, who were endeavoring to keep improper persons from the enclosure.

Gentlemen, I have thus gone through the acts of the election. I submit with confidence, that there is nothing in evidence to constitute a conspiracy; and that the prosecution have made out no case to entitle them to a verdict of guilty. To make it a conspiracy, I trust I shall have the sentiments of his honor with me, that the conspiracy may be laid aside as respects the evidence; and that unless the riot was actually committed, you must find the defendants not guilty. I call to your recollection, that this is a party prosecution; a prosecution of men, combined together for the purpose of gaining their view as it is alleged, unlawfully, in which there are admitted as witnesses the leaders of the prosecuting party, an advantage which the leaders of the German party may not have. You are not to consider this as a proper prosecution, where the laws proceed, superior to influence or partiality; in this case it is in the power of the English party to shut the mouths of the others, and the most intelligent of their party are admitted, and a ground is open for them to give their testimony as they chose. We cannot divest ourselves of the idea, that of all the impressions made upon the mind, and the mind acts immediately upon those offered to it, nothing is more permanent than those of a religious nature; and the impression that these men, indicted to favor party views, are denied an opportunity of explaining their conduct, does not a little affect our considerations of this question.

I will now submit to you, whether independent of any riot, there exists a conspiracy by all means "lawful or unlawful," to prevent the introduction of the English language. It is a sweeping charge—but one which, independent of acts, would need but little legal discussion; for I do not know how the question of conspiracy itself could bear a serious argument. I do not perceive that it is necessary to question the doctrine laid down by Mr. Binney, that a combination to do an unlawful act, or a lawful act by unlawful means, are equally indictable. There is a very amusing report of the trial of the New-York journeymen shoemakers, which has been adverted to, and in which there is a powerful argument of the celebrated Mr. Sampson for the defendants, in which the court laid down the same distinction as in the case in which my colleague presided. This is not a question of law; but an allusion to the decision of my colleague, formerly, was thought necessary although there was not any thing in the argument of my colleague, as recorder different from that he made use of as counsel in this case. In the case of the journeymen shoemakers, there were no words like "body and life," or any thing of that sort; but there were acts, and it appeared, there were rules passed, which the prosecution knew of, whereby they undertook to force other journeymen to come into the same measures they had determined to adopt. In consequence, every journeyman, whether a member, or not, was forced to submit; for their practice was to make a strike, as they called it, at the person who employed them, and they called the unconforming journeymen, "*Scabs*." These scabs were not only excluded from all places in which they were at work, but were considered such vagabonds, that they would not be allowed to board in the same house or drink out of the same cup with the others. This was the case before Mr. Levy, as recorder; and if these defendants had associated together and said, we will compel the English side to hear German preaching; or the Swedes to hear our German language, then there would have been some resemblance of this case to that of the cordwainers; but I see not the slightest degree of that inconsistency imputed to my friend Mr. Levy. Another reference was made to the case of the German Roman Catholics. That question was, whether a person, who contributed to the maintenance of the ministry, was not allowed to give in his vote at the elections, when not a German. The answer was, "you have received him as a member, and having so received him, it would have been a mockery to say, you are obliged a member, to contribute to the support of the congregation; but you shall not have the benefit of your membership."

I now proceed to the offensive paper, which is supposed sufficient of itself to carry these individuals to the jail, constituting a crime in itself, and if nothing was done more than affixing their signatures to it, is sufficient, if it had never left the table on which it was signed, to render every one who had put his name to it, liable to fine, imprisonment and loss of character. Let us now examine it; but if this is the way you are to examine by law every reli-

gious proceeding; we must tremble at every step we take, and at every line we write relating to the maintenance of religious rights; whether we are in error or not, the argument is the same, and fine, imprisonment and ignominy await you. What is this paper? The question is, is it a confederacy, a combination? It is a petition to the corporation, who were in actual exercise of their functions and looked up to by this, as well as the opposite party, to give that direction to power which in a call from one and the other they deprecate. (*Reads the petition.*)

In this production I ask, what is there, either offensive to religion or to law? Here are gentlemen who come forward and express in sincerity and with zeal, the feelings of their hearts at an attempt which they understood was to be made to introduce discord and destruction into their worship. They addressed this, not to the party to incite it to improper acts; but to the members of the corporation, from whom certain acts were necessary to proceed, in order to have any force given to those in favor of the English language, if they should proceed to introduce it. It is not an agreement to do any thing, but a request that their officers may act in such a manner, and we find it no more than what is in itself, not only orderly but perfectly consistent and agreeable to their character. Respecting the third paragraph, you will recollect, that Dr. Collin, together with two other witnesses, were asked, if the words were different from the import of them in the other paragraph, they said no; the third paragraph was stronger, but the words were the same.

What is the amount of this? In the first place they have declared themselves to the corporation, that they will defend with their bodies and lives, the German divine worship. The signers were supposed by this, you will recollect, to have referred to some secret agreement, before entered into; it was supposed that they had taken an oath, something like that taken by persons who have made resolutions to attain unlawful ends. But it appears, they understood taking an oath to God, equivalent to making a vow to him in a most solemn manner, to support the German Lutheran congregations. They considered the sacrament as an oath; and it is expressly stated by one of the witnesses, that no oath was ever known to be administered to any person to support the German divine worship against every attack. You are told by one of the gentlemen, that it means to resist an attack that can be lawfully resisted; and, therefore, in the manner here stated, they united to defend with their bodies and lives, the German divine worship against every unlawful attack.

The words "*strange language*," it appears have given offence; it was considered an insult to call the language of our country a strange language. If this matter is to be considered of any consequence; what foreign family is there in the United States who would not, in speaking of the English, call it a strange language? The Germans are a family, a German family widely extended; unquestionably in reference to this family, it is equally a strange

language and foreign ; the German in the language of their land. We perceive throughout this petition ; for call it conspiracy or what you please, in point of fact it is a petition, only an application to the corporation, addressing them as their honorable corporation.

Gentlemen, they honor their corporation and their German manner of worship ; and I hope it will not be considered any disparagement to these men, that they who are best acquainted with the German language, are most attached to it ; that they discovered something in that language which caused their attachment to it, you must see in that expression, which we coolly and not so enthusiastically may admire ; it is the language of sincerity, it comes from the heart, and cannot give offence.

Is there a combination to erect any thing like a standard of reasonable opposition ? No ; they refer them to the charter of the church, telling them in the first place, that there cannot be any thing done, but by two thirds of the corporation, and the concurrence of the congregation. You see what these gentlemen were anxious to prevent ; but you will see it more clearly when you come to examine this petition. An application was made to put it to vote, which induced them to appeal to the charter, and they proceed in the next place, to require, that they shall not put it to vote, whether the English be introduced into the churches. Now, gentlemen, you see how they go on step by step ; so far we have come to no particular act, inconsistent with their charter. They then expressed an apprehension, that if the opponents of German preaching, are allowed to meet in the German school houses, it will be considered as an encouragement to the attainment of the English language. So long then, as the German continues to be the only proper language of their corporate body, so long these gentlemen are right and correct in saying, that if the English party are allowed to use the school house, they receive a certain countenance.

After having thus specified the particular objects upon which they pray the corporation to act, and this is the whole efficient intention of this writing, they request the corporation to do three things—first, not to put it to vote, whether the English language should be introduced ; secondly, not to allow the members of the corporation to speak in English, and thirdly, not to allow the English party to meet in the school house ; these being the three objects of their petition, they then come to a summary of the ground they took in the outset. Allow me here to say one word : at first view, a literal translation of the language makes it appear almost an absurdity from the difference of idiom ; for instance, they say, “ this congregation was established by our ancestors, who gave their wealth and their blood for its establishment.” Does not this appear ridiculous ? Whose blood was given ? Their blood never flowed, as far as you can be led to understand, in this country. They have lived under an equality of right, from the commencement of their church, when the wisest man of his day, made it one of the fundamental rules of his settlement, that every man had a right to worship as he thought proper ; they had no necessity for the expenditure of their blood for the purpose of founding their con-

gregation. It means something that cannot be well rendered into English, that what was most valuable was constituted at that early day to the establishment of the church.

Let me pray your attention to a side blow, attempted to be given to the evidence. It was insinuated, that those who now advocate the German language, were not the descendants of the first founders. What proof have you that supports this position? A position, which can only depend upon presumption; that the German was only advocated by those who are continually arriving in this country, and, who wish to have a church to worship in, in a language they understand. What is the course of German education here? We know that when a wealthy man comes here, he generally wishes his children to be educated in the English language, and not in that, in which they were theretofore brought up. But is this the case with the whole congregation? If there are a set of men, who are going off every twenty years like a swarm of bees, in consequence of their following the example of those desirous of using the English language alone; yet there is an equal proportion who have not deserted the religion of their ancestors; who are not able to give their children an education to enable them thus to abandon the language of their fathers. Such are the industrious tradesmen who use it in their prayers, when they go to bed and when they rise; and to whose judgments the doctrines of Luther can only be addressed, when spoken from the church their ancestors founded, in the original language.

These being the objects of this application; these being the fears they expressed lest the English should be introduced; fears so great that they declare towards the conclusion, that if the breadth of a finger be given up, the whole will be in danger; (and according to Mr. Binney's argument, there is great danger; it shews that there was some foundation for the apprehension of these people;) they solicit in the conclusion that they may not be made a subject of laughter to other nations, and conclude in the respectful manner that would be expected from them to that honorable body.

We now come to the words "body and life," upon which the case of the defendants must turn. We are to consider the proper meaning and construction of the words themselves, I will meet the gentlemen upon the ground, that a reference is to be had to their declarations and words expressing an intention at a subsequent period, to ascertain what was the intention of those who made use of these words. First of all, let us consider, how far the antecedent expression warrant the implication that more was meant than meets the ear; that the intentions were to defend with body and life, the German worship, to resist a lawful attempt to introduce the English. It is conceded by Mr. Binney, I pray you to recollect, that if the word "attack," means an unlawful attack, then there is no harm in it; but he considers it to mean a lawful attack; although he has also conceded, that it may mean a lawful as well as unlawful attack. He has endeavored to prove that it

means a lawful attack, because the words in connection, import an intention to expose life and limb in support of the object for which they had united. I will now shew you the acts by which we are to be supposed to have made an unlawful attempt.

It is a considerable time since this dissention first arose; a counter representation intended to meet one of the German party, was made in 1805. I shall read it to you because if there has been that misapprehension, in the construction given to the charter, of the rights which some of those have signed this document, supposed this charter gave them exclusively to support German preaching, they probably received from this paper, and those who now prosecute them originally, espoused those arguments for which they are now blamed. (*Reads it.*)

They argue in favor of the German, being the only language that can be used in their churches; and take a very strong ground that neither the congregation nor the corporation can legally give away their privileges; that it cannot be decided by voting, whether the English can be introduced, because the charter had clearly decided the point. Now, gentlemen, without going further, let us see from whom this springs, and I wish that those gentlemen who have been examined by the prosecution, were present to hear the signatures read. (*Reads the names of the signers.*) These persons who at that time gave these reasons, were members of the vestry, and gave it as their opinion, that it was not in their power to introduce English preaching; consequently when the defendants prayed the corporation not to allow it to be put to vote, they had high authority; all that could be offered by the most respectable signatures. They then having this before them, have at least this authority; on the other hand a certain set of gentlemen, no doubt very respectable men, meet together at a school house, where, without the sanction of the corporation, it was undoubtedly an intrusion, on the twenty-first of September, 1815; George Rehn, in the chair, Mr. Keemle, secretary; there the question was debated and the resolution proposed. Mr. Leib came forward and made his declaration, "you are making war upon the congregation, no law can force this congregation to have English preaching introduced into their churches; you must do it in a more gentle way; you must do it by solicitation; you are not doing it by force first, and then solicitation, putting the cart before the horse. These persons had no exclusive right in the school house, to keep any of those who had an equal right to come there from entering it. The Germans had the authority of Dr. Leib, to believe that the law of Pennsylvania could oppose their rights; and this being about the time that the English party had made a trial to the same effect, they referred to the members of the corporation to what had been said upon the subject, and asked them not to let any thing be done in favor of the English preaching. They were entitled to say, "we are now to prevent these rights from being taken from us; if they use the words, that they would with body and life defend those rights against any attack, any man with a particle of

Christian feeling, would not give it the force the opposite party think it proper to attribute to it.

There were certain individuals, with respect to whom, there was unbecoming language. I am far from defending the language of Christian Schmidt; but because I will not defend him, are his offences to be visited upon my clients? Did they persuade him to make use of such language? If he went there and acted in an intemperate and improper manner, let it be on his own head. If Burkhardt was offended, he had his remedy; can you impute to all the members, who united in this application to the corporation, that they are implicated in the case of these words "you are a Judas and ought to be hanged." But remember, when Busch tells us this; and it is not the only instance in which he tells us only half the story; when he could tell you, that the beer was carried to the inspectors; when he could tell you of the expression of "here comes the Lord God of the Germans," but not that he made use of it; he who tells the expression used to Burkhardt, does not tell, what is in evidence, what was said by him to Schmidt at the same meeting, at which this very offensive words are imputed to the party. I think Herpel, who testified that upon Schmidt's saying something, Busch said to him, "hush, hush," upon which he answered "no, when I have a rope about my neck then I can speak no more." It shews how this man is to be understood, where he speaks thus to Burkhardt; there seems to be in the language something in the nature of a figure, and merely indicating a serious and fervent manner. Busch has omitted another piece of testimony, that if his saying loud enough to be heard by all about him, "that is a lye," at the German meeting in the Northern Liberties; yet this is the man who complains of the intrusion of the Germans among them. Upon his saying this, some one of the members who heard it, got up and said, "it comes from Busch, I thought he did not understand German." This is also suppressed, but rather we charitably suppose, forgotten by Mr. Busch. Take all these circumstances together, combine them; you will find, there are angry expressions on both sides, and if you recollect, that the witness who speaks of it, bears harder upon that which is against the opposite party, and that the party whose mouth is shut may not be so fortunate as to have bye-standers to recollect what the witness may forget; what does it come to more than this, that there were very cross words upon many occasions, but nothing that can amount to a conspiracy.

We shall be told perhaps this is nothing; there was an interruption of their meetings. If there was, what does it amount to? There were meetings at the school houses of members of the congregation, who were going to introduce a foreign language; they had no right to meet there; and I will put it to you, you belong to different sects; suppose there were some in the Presbyterian church who were inclined to introduce the Catholic worship or vice versa, and that they were to have a meeting in their school house, would you not be acting in a most regular manner to interrupt it? Where

is the difference? Some look to mere matters of faith, some to mere matters of form; as in the party of Friends, they think that a hat must not be taken off, and that colored cloths should not be used different from their other Friends. Now suppose a party were to undertake to meet in one of their school houses, to alter their custom, would it not be justifiable for them to prevent it? Certainly so. So in this case, they consider it their duty to use one language, and they have a right to attach importance to it. No tribunal of an earthly nature can pretend to say, that these members are wrong in considering this as a most impatient part of their church worship; and therefore they were justifiable by the laws of God and man. But where did they interrupt them? Did they interrupt them at their meeting of December? I appeal to the minutes of that meeting. Did they not go through their business? And was there not when they broke up a breach of peace and decorum? Was there not a cry at the door of "huzza for Dr. Leib?" Was this peaceable? Was this decorous? After this, there appears to be an address, signed by Dr. Leib; an address which is not a petition to the corporation, and which would have remained in the archives of this corporation to this day, if it had been; but it is directed to, and intended to be distributed among the members of the congregation. The signatures to it are those of Dr. Leib, Mr. Long, Charles Eberle, Frederick Burkhardt, Jacob Mechlin and George Witman, consequently it must be considered as having the assent of these people, many of whom have been examined as witnesses in this case. I cannot at this late hour, read the whole of it, but I will advert to the 28th page, where there is a threat as strong as any contained in this, upon which the prosecution is founded. There is this distinction; those who have signed the petition, put only their own bodies and lives at stake; this hazards the bodies and lives of those to whom it is addressed. "Let it be recollected, that English preaching is asked, upon condition that the German goes and continues along with it. Reflect, that this is a reasonable proposition.—That it is so reasonable, it should carry unanimously.—That nothing else will unite, will harmonize the congregation, and put the apprehension, that the German will be done away, forever at rest. You cannot deny it, and do your duty to your family, your neighbor and your God. Do unto others as you would that they should do unto you, for that is the law and the prophets. It is the great Christian rule of justice. If you do not practice this now, perhaps, in a little while, you will have occasion to repent it in sackcloth and ashes." How were they to repent it in sackcloth and ashes? In a religious point of view? No. But it goes on and says, "then you will recollect who those were who wanted to secure your German, and who wished English preaching upon that principle alone. Do not turn into enemies those who are disposed to be your friends. Circumstances that cannot be controlled, have given, or at any rate soon will give, a preponderance to those who desire English service. Your own sons every day increase their number, and what will your

situation be, if, in the might of their power, they rise and obtain English preaching and English service, without any condition at all, as it regards the continuance of the German. The present is the time to harmonize the congregation—do your duty as parents and members of society, &c.”

This is language addressed to the congregation, calculated to intimidate them; if you do not adopt our plan, if you do not give us an equality as to the preaching, you will have to repent in sackcloth and ashes. Their language is, that the Germans will have to give up to English preaching, when their sons will rise and turn them out entirely. Is this the figurative language continued? Undoubtedly then, if there would be a repentance in sackcloth and ashes. It means, that they will oppose with the greatest strenuousness, those who will stand by and support the German preaching.

At the Plumb street meeting, there can be no question, that the Mosheim society was no way connected with the English or German parties. It is a society exclusively for a charitable purpose; they knew nothing of any other meeting. At another meeting, the Germans withdrew into another room, and made, as you were told, such a noise, as to disturb the others. Wagner tells you, he asked the chairman what they were about—they told him, important business; and, gentlemen, they certainly had a right to meet, as well as the others; they had a right to pray and sing hymns, as well as the others; and if, because of the slight partition, there was casual noise, it could not but be expected from a society of so large a number.

What have the gentlemen done in this case? they have gone so far as to collect by the greatest industry, to support what they infer from this petition, the trifling conversations of a man who has borne very little part in this dispute, Mr. Weckerle, who would now and then break out with an expression of “damn the rascal,” or something of the kind; but nothing of this kind can have any effect whatever, in relation to the whole party; it was drawn out by the others. When spoken to about making up, Weckerle says, very naturally, “these men want us always to make it up, make it up, but held a stick over one’s head, break their head or give a black eye and then say, make it up;” what was the answer? “Well, if you have a black eye, you better cry for mercy and give up.”

Mannhardt is guilty of having said, at different times, “if these measures are persisted in, blood must flow.” What blood must flow? All the expressions that were used by Mannhardt, are considered to have been spoken by him as the leader of the party, and from whom these avowed intentions were to proceed. What blood must flow? Can it be presumed, that there was a design to spill the blood of others? Could such artful conspirators be so indiscreet as to go about the streets like children, telling every body, blood must flow. It would be absurd in the highest degree. But that there was something different from the meaning attributed to

these words, is evident, from Eberle's testimony. If the gestures are presented and the expression of the countenance, they might explain, what was meant by Eberle, when he says, "Oh! Oh! no Mr. Mannhardt!" "Yes," said Mannhardt, "blood flows." Mr. Binney gets over it in a singular way. He says, that every rhetorician must know, that it must be understood as expressing what was to take place. What is the expression? Can I believe that if I say, blood flows, it means blood will flow? What can he mean? We can surely give it a legal construction; we are not to prefer that which is supposed to be criminal, especially if it be forced. The world are to be taken together, at a time when it is clear, no outrage had been committed. The meaning must be, that the anger of the party was excited, by the efforts of the others to introduce into the congregation, that, of which, they were apprehensive, and which caused their blood to flow warmly through their veins. Have you reason to suppose, that a man of Mannhardt's literary attainments, could be so foolish as to go round the town to all these men to whom he was opposed, and tell them, that their blood was to flow; that murder was to be committed upon them? No—such could not be the fact; the very language rejects and refutes the inference. I therefore trust, that as with Weckerle, so with every man, whose language can be introduced; and remember, that we cannot introduce much of the conversation of our opponents; their conversation affords you no instance of the criminal exposition of the words, "body and life."

Having thus, I trust, successfully shewn, that there is nothing in the efforts of the opposite party, to assist you in attaching to this document, any thing that is done at a subsequent day; we now will shew you, that in an application from the German party to the corporation in October, instead of desiring the corporation to go further, than the charter allows, they refer to the charter itself, as authority. In this document, which was read on the eleventh October 1810, in the corporation, there is no reference to force, violence, blood, body or life.—No, gentlemen, it is a reference to the laws of the country, the charter and church constitution. This paper concludes, signed by two hundred and sixty-one persons, instead of one hundred signatures which were to it at the foundation of the prosecution. Whatever expression is introduced in the preceding charge, I will leave to you the strong language addressed to the members of this corporation, requesting them to assert their right, and intimating, that if they do not, they would consider them as deficient in their duty and not meriting the name of the vestry. Language not too strong, and which we frequently find, does pass between those who send, and to those whom sent. Therefore, if they said, "we declare them as having broken their duty," Dr. Leib was not a member of the corporation, and if it is a denunciation of Witman, they are perfectly welcome to it, and may make as much of it as they are able; it amounts to no more, than the withdrawing their confidence from him, and it consequently comes to the ground, that there was a great animation in the language.

There are several instances of figurative language, but you are not to say, that they are illegal, unless you see, that an illegal act is the consequence. If this be understood as an additional paper and explanation of their views, I say, the expressions were not too strong, but such as they were authorized to present, and the other ought to have understood and been bound by.

If the mere casual expressions of those that signed that paper ought to rest upon the individual, and not upon the body, the subsequent application to the corporation comes to no more than a demand of rights. I had wished to go through the authorities in these books, to shew you from them the meaning of these words; but I deem it unnecessary, for it appears to me, that the words life and body will support the idea, that it is a lawful expression in application to a lawful object, and there is no instance in which it applies to an unlawful object. Surely, in the large city of Philadelphia, which is the seat of as much literary information as any part of the United States, the opposite party might have met with some person, who would have supported that construction. I would ask, whether Mr. Varin, Dr. Helmuth and Dr. Collin are to be considered, as those who would give an improper signification. Varin, it is said, spoke under the feeling of gratitude; we will therefore, if you please, pass him by; but we have Dr. Helmuth, who; it is not pretended, has any bias whatever. Language will always have a tincture of the work in which it is; but, it is expressly told you, that these words have no other meaning, than an innocent one.

It appears, that this petition, this denunciation of blood and murder, was presented to the corporation, and publicly read on the twenty-sixth of December 1815. From the twenty-sixth of December, its noxious and baneful qualities did not appear to have been considered the foundation of prosecution. Witman takes a copy at once; what does he do with it? He spoke to Weckerle about it, trying to provoke him to one of those hasty expressions, which are now brought against the whole of the defendants. After this conversation, nothing more appears to have been done, until after the election in January, when Witman, disappointed in his election, conceives the design of getting the possession of this paper; old Mr. Wolbert holds out the idea, that he was in favor of the German party, and they put him on the head of their ticket, and at the head of their corporation. What was the first thing he did? Recollect the family connexion between him and Witman; locked together by marriages and intermarriages in a family circle—they go together to Mr. Schaeffer: at this time the petition had remained in the records of the corporation; from whom it could only come into the hands of the minister; and without a vote it could not have been taken out of their possession; yet we see Wolbert go to Schaeffer, and by a falsehood, by false representation, get it into his possession, saying, it should be brought back presently. They avail themselves of this in an indirect way, to get possession of it; and this superannuated old gentleman, (Wolbert,) has no sooner

been made the means of carrying this point of Witman, than, he sends in his resignation; he sends it in at the next meeting of the corporation. Was this honorable conduct? Was this the way these individuals ought to have been treated? Had these members of the corporation a right to possess themselves of this document of the congregation in such a manner, and then go to a magistrate to found a prosecution upon it? You will not be induced by such a circumstance to give more force to this paper, than it ought to receive. Are the motives of Witman as pure as they ought to be, for this prosecution to receive from him its impulse? A man who could go to a blacksmith, and hold up to him the idea, that they would drive him from that, which he had bargained and paid for. Is this a pure proceeding? Can you not trace in it, that line of conduct which ought not to be expected from a public prosecutor, who comes forward as in the present instance? Is this the mode of proceeding pursued by these individuals, to say nothing of the language of Cope, that they will endeavor to make this a conspiracy if they can, and send the defendants to the work-house; but they are themselves aware of the difficulty. When you consider this, you will take into view what has been done on both sides. If you take this paper unconnected with the preceding declarations, though consistently with forms of law, they must be admitted in evidence, you must acquit the defendants on the first count most certainly; and upon the second count, if there were no acts of these individuals, and if there is no clear evidence who knocked Mills down, the result must be, you must dismiss these gentlemen from the ignominious punishment that would otherwise await them, and leave the question for discussion concerning the validity of the bye-law and the regularity of the election; when, by your verdict, these persons will be authorized to come forward, and will not be prevented by having your verdict of guilty thrown in their teeth, and incapacitated from giving in their evidence upon that occasion.—*Adjourned.*

FRIDAY, JULY 18TH, 4 O'CLOCK, P. M.

JARED INGERSOLL, Esq. *Attorney General.*

MAY it please your Honor—Gentlemen of the Jury.—It may seem paradoxical, but it is certainly true, that frequently acts perfectly well designed, occasion the greatest possible rancor and spirit of revenge.—I have lately seen a book, which probably his Honor has also met with, and some of you likewise, entitled, “Paul’s Letters to his Kinsfolk,” in which we have stated more at large what had been before imperfectly mentioned in our newspapers, the excitement which has been occasioned among the Belgians, because the King of the Netherlands had it in contemplation to allow a toleration of religion. They have been accustomed to have an arrondissements as it is called, to transfer the inhabitants from one government to another with as little ceremony, as you would change the pasture of your horse or flocks. They have been accustomed to general conscription; the son is taken from his parents to distant parts of Europe, there to pine, sicken and die in unwholesome camps, or perish in the field of battle; this has been suffered without a murmur, but the instant it is suggested, that people shall be taught in their own language, and not in dialects which they do not understand, and that every man may worship according to his conscience, we hear the spiritual thunders of the church give note of dreadful preparation; and we are told in language, pretty much what we have heard on the present occasion, that if it be carried into execution, and people pray and preach in language they understand, the only true religion will be extinguished, and consequences of the most alarming nature will be the inevitable result. This, gentlemen, in part, is what we shall trace as the dictate of mistaken zeal, often well meant; but when without a knowledge of our laws, and opposition to them, it assumes the seat of reason, it is impossible to set limits to its wild, infuriated progress. Upon the present occasion you will undoubtedly, under the direction of his Honor, take care to ascertain with precision, what it is we are to try; and in the first place it is necessary to know what we are not to try. You have heard my friend Mr. Levy, two or three hours, and my learned friend Rawle, four hours, laboring to convince you, that those of the English party were as bad as those denominated the German party; I speak the authoritative language of Mr. Levy while recorder, when I say, “all that matter is entirely beside the question.” If Witman, Krebs and Long have entered into a combination not allowed by the laws of the land, the commonwealth has no partialities; let the recognizance be put into my hands, an indictment will call them to the bar, and their defence be submitted to a court and jury, in the same manner as in the present instance. If, (which I do not admit,) it shall be ever so incontrovertibly established, that faults were on one side as well as on the other; if according to my idea of the matter, they were combined as well as the Germans to carry

into effect their rights by force, they would be equally culpable. But that is not the subject at this time, under discussion.

In the case of the journeymen shoemakers, that learned gentleman, sitting as recorder, told the jury in most explicit terms with regard to imputations against those who have made complaints against the defendants, you are not to let them have any weight at all. Hence, that maxim, that malice is sometimes a very good prosecutor. We know, that many of our prosecutions, are not by any means in consequence of a pure desire of justice; but the exclusive question, upon this occasion is, are the defendants guilty of the charge brought against them, the others may have their day of retribution, if they deserve it, but this is not our present concern, it is not the question now to be tried.

Let me relieve you from the fears, very ingeniously suggested by my learned friend, Mr. Rawle; he tells you, that in case of conviction, the defendants are forever rendered ignominious; they are stigmatized as having committed an infamous offence. These consequences are represented to you, that you may not fairly meet the question and give your unbiassed opinion. For your consolation let me state, that in the same shoemakers case, where there was a conviction, the tremendous result was a fine of eight dollars and nothing more. One other particular result of prejudice, allow me to notice as a matter of prefatory remark. Why this hostility to the English language? I have no difficulty in concurring with those who may think with Mr. Duponseau, that it would be more proper to say, the "American language," because, although it is the language spoken in England, yet we have only approved it and adopted it for purposes of convenience. When the United States, emerged from a colonial state, they had a right to select the French tongue as well as that of Great Britain—convenience led them to adopt that, to which the majority were accustomed. There is no reason then to be prejudiced against this language on account of its name; and to the patriotic German it is pleasing, that it is the language in which the declaration of independence is announced, and in which the charter of our liberties is written, and preserved. With regard to the Irish, what have they done to deserve, that their name should be a term of reproach? They are our mechanics our day laborers, our manufacturers, and our pioneers, who clear the woods for the German cultivator; they were among the best of our soldiers in the revolutionary war, why then entertain this ungenerous prejudice? Prejudices may mislead, but cannot possibly inform court or jury. Having thus, gentlemen, noticed these preparatory matters, I recur to my question; and my great object is to speak with perfect clearness, that I may not be misunderstood. What are we now to try? What is the court and jury to determine? Whether the English language shall be introduced into the worship of the churches of St. Michael and Zion? By no means; we have not, nor has the court, and I am sure you would not assume to yourselves, such jurisdiction. All we contend for is, that the question which the con-

gregation are competent alone to determine, shall not be decided by either party alone, by threats, or by spilling of blood, but with calmness and deliberation by the vote of the congregation, fair and unprejudiced by any undue influence whatever. There is another circumstance calculated to excite prejudice; we are told, "here is a criminal prosecution by one party, in which they are allowed to come forward as witnesses, while on the other hand, silence is imposed on no less than fifty-nine persons. It is difficult to avoid censure, when there is a disposition to find fault. The prosecutors had one of two courses to pursue, either to bring a prosecution, or to institute a civil action; what would they say, if a civil action had been brought. "Here these persons so much interested for religion, adopt a civil action to get money;" this would be attributed as their object and that very measure would have been censured. Let us know exactly what is the object to be tried. The only question is, as to the introduction of the English preaching in these two churches occasionally, or alternately with the German; as to the degree of proportion, the congregation has all the power of the legislature to decide, shall this power be controlled by election, or by force? We contend, that if you can be convinced, that these gentlemen who are now endeavoring to impute malevolent designs, undertook to say, "we will prevent the introduction by force if we cannot in any other manner," we are entitled to your verdict.

Mr. Rawle's argument was endeavoring to entangle you in a mere net of form. He said, "there never was an agreement to carry their objects by *every means lawful or unlawful*, as alleged in the indictment." We are not to prove *all*, that is in the indictment; it is the duty of the person preparing it, to have a variety of words which may meet what may be advanced on the other side. If there are words enough upon which to support the allegation, that they intended to resist the introduction of the English worship by any unlawful means, it is an unlawful combination and the defendants must be convicted under that indictment. The law is reasonable, because I hold it to be a maxim of the utmost importance in every well regulated society, that the law and the law only, must govern; and surely, of all the people or countries on earth, when we have our annual legislators, who can mould and fashion that law as they please, when every law is of our own making by our representatives, we are, of all people, the most inexcusable, if we do not refer to that law and the courts and juries administering it, every dispute arising between us relative to temporal or religious concerns.

Another argument of my learned friend, was to impress on your minds, the improbability of the fact, that as they could carry their point by a majority, they could not entertain the idea of carrying it by force. If this is so, then the offence is more grievous; if the majority was on their side, which we do not admit, because if you include Myers's congregation, who, if they have seats in their churches, have a right also to vote, every probability is to the con-

trary, that they are not the majority, but if they have the *legal* power, if they have the majority on their side, they are inexcusable to resort to violence and outrage. Mr. Rawle endeavored to answer an argument urged by Mr. Binney, solely upon principle, who told us, that in the natural course of things where there are foreigners or persons who were once so, or descendants of foreigners, whose language is different from that which is generally spoken, certain it is as that cause precedes effect, they will cease to speak that language and have recourse to the one spoken in the country in which they live. To this it was objected, that then they had only to let things take their own natural course; that the evil would remedy itself. If my friends had thought of the tendency of this argument, they would have rejected it with abhorrence. What, gentlemen, are your youth to grow up, wanting the religious instruction, which, if you defer, the fault can never be repaired, but by a miracle. All our complaint is, that the defendants would not allow it to be decided fairly by election; but they undertook to intimidate the others, and encourage an adhesion to their party by pledging themselves, that at all events they would, if necessary, support their opinion by force, and it is the only fair and reasonable construction of the paper by itself, or connected with the acts of those who have subscribed it.

If indeed, there is the impediment in our way; that by the charter, the divine service of this congregation must be forever performed in German, then we fail at the threshold, I acknowledge; convince me of it, I close my mouth at the instant and enter a *nolle prosequi*. The position is all important, they ought not to let it be doubtful; no time would have been better for shewing this, than at the moment of election. Is it in the charter? Or is it in the fundamental articles? If it be, let it be shewn in argument—let my opponents shew one article that prevents the congregation from introducing the English worship when they think proper, and I will give up the contest in a moment. The Germans, who in 1765 petitioned for that charter, knew better than to introduce a clause of that kind; they took care to leave themselves, their descendants and posterity perfectly at liberty in this respect; and I will appeal to his Honor with perfect confidence, that we are absolutely right in saying, that there is not a single syllable that countenances the idea. Whether these men were all of them distinguished as *literata* in their day, I know not nor is it necessary to inquire, but they were assuredly men of piety, and admirers of that great man who began the reformation; Martin Luther, gentlemen, it is an historical fact, as such I mention it, that with that great man it was a common expression, “let not faith be a prisoner to language,” that is, let not the great principles of religion be confined to any particular tongue, but let your youth be instructed in different languages, and let the principles of religion be every where disseminated. I presume, those Reverend gentlemen, Mr. Schaeffer and Mr. Helmuth, are contributors to the charitable design of sending Bibles to the uninformed world; has the absurd idea en-

tered into any man's brain, that he would not contribute to the fund, if the bibles were not in the language he speaks. If they were sent into China, must they not be translated into Chinese. It would be a ridiculous farce if these books were sent without being translated in the language of the country for which they are designed. There is not an intimation in the charter, not a syllable, there is not a single circumstance in the history of that church from the time the charter was granted, till the present moment, to found the idea, that the Germans who built these churches ever entertained the absurd idea, that they should not be at liberty to introduce the English preaching, at any time, if they thought it proper, under the circumstances of the case. In order to shew with what propriety these Germans acted, do we not know that this result necessarily takes place. I recollect, that there was a settlement in the State of New-York of the Hueguonots who came from France, their native land, about the year 1692. Is it not certain, that every Frenchman who at that time settled in the then colony of New-York, has long since paid the debt of nature? And it is not improbable, that of all their descendants at New Rochelle, there are not ten in the whole congregation who could understand the service if it were in the French language, and they, I have no doubt, have their service in English.

Free from this embarrassment we are to consider the charge and defence. I have no hostility of temper to any of these defendants, and do not wish to use hard words unnecessarily. The charge is that not submitting to a decision in a regular course of election and by law, they had the intemperance to undertake that they would exclude the divine service *from these churches, in the English language* all together. If this is my charge, when do I look for my evidence? Oh! says my friend, Mr. Rawle, you look into every nook and corner, you will split hairs, and in that way if you can get any thing at all, you adduce it against my clients. If I cannot show you so many proofs upon proofs, that you cannot entertain reasonable doubt, I will acknowledge there is no ground for a verdict of guilty.

"Words fly," the maxim says, "what is written remains." We, gentlemen, have a writing; there is no presumption to be drawn from conversations, where a person speaks without reflection, and the next moment condemns what he has inconsiderately said. Here is the writing where the language is strong, and one would suppose that we may refer to and say, we take your own words, we suppose that what you have written is true, and it cannot lie in your mouths to say, "that what you have written you did not mean: otherwise there never could be a charge in a court of justice maintained, if a person were at liberty to deny what he had written had been intended. What is the nature of the writing in the paper? You are told, that it means nothing more than the taking of the sacrament, which in some measure imports an oath. Gentlemen, that writing does not say so; there is no opportunity for that play of words; that is not the expression in the paper; it

is that they have bound themselves before God, and solemnly to each other. Well, but says the gentleman, where is that agreement? Show it; let it be brought forward for the inspection of the court and jury. Why gentlemen, it was not in our keeping, whether it was really so criminal as it is represented we know not. If you think you have given an account of it worse than it merits, shew it that we may compare it, and if there is a variance, and it appears to be incorrect, you shall have the advantage. No, this is not done nor offered. Well gentlemen, when under their hands, they announce to their corporation, that they have bound themselves in a solemn covenant, that they will oppose the introduction of divine worship in the English language, I am bound to say, they did enter into such an agreement. I take their own words for it; and it will not be permitted, that at a subsequent day any should disavow what they had thus avowed, that they should now deny what they had thus declared. An agreement of that purport they did enter into, and the only question must be into the import of it. To save time, your Honor will permit me to refer to, without reading it, and my honorable antagonists will be good enough to correct me if I make any mistake. That paper, the translation of which we are agreed, is unexceptionably correct, does declare that the conspirators will oppose, I am confident I do not mistake the precise words, the introduction of divine service in the English language, with their bodies and lives; in my imperfect manner of expressing it, *mit Leib und Leben*, have pledged themselves to us all their powers in supporting the opposition. Without relating any more of the writing at present, except to remind you of Mr. Rawle's meeting with the stumbling block in his way about the election, and how careful he was to mention the putting it to vote; no, gentlemen, when pledging themselves that they will oppose the introduction with their bodies and lives, they connect it with an express declaration that it is a question that cannot be decided by election. The original word, I am instructed to say, is properly to hold an election and not to vote; because we know perfectly well that election is not applicable to the corporation, but to the congregation; the corporation have certain legal powers, but with regard to election, it is reserved exclusively as the power of the congregation at large.

If, *with body and life*, are the words, how are they to be understood? We have had three learned gentlemen brought forward to tell us; it seems to me, we cannot understand plain English. Who was this translation made by? Oh! But says my friend Mr. Rawle, dictionaries, and books may give words, which may change their signification from time to time, but you are to take them as they are understood at the present day. Precisely so, and we have acted accordingly; we made application to Mr. Goodman, a gentleman entirely competent to the task, and his translation we adopt; and recollect he said, "I made it as literal as I could, preserving the sense. Then, pray let me ask, gentlemen, why are we not to understand these words exactly

as we would if they had not been translated? If you had met with them in English, would you have entertained any doubt what they meant? They had considered themselves as an *ecclesia pressa*, as Dr. Helmuth says, yet they do, it appears, pledge themselves to carry their point by the force of their bodies and lives. Why, are we not then to understand it as if it had been written in English? I am not desirous of pressing it unreasonably; I wish to afford the gentleman every reasonable opportunity of giving a proper explanation; but my position is, you are to understand it exactly as if it had been written in our language. We have three gentlemen introduced to give the meaning of these words. Mr. Rawle said, that he intended to enter into a critical discussion, but he was going out of town, and therefore not having time, would give it up. I knew the gentleman perfectly well; if he had thought it was necessary to the benefit of his clients, he would have staid a few minutes longer for that purpose. I do not believe I am at all mistaken in my character of Mr. Rawle. We will take the lights which are furnished, Varrin, Dr. Helmuth and Dr. Collin. What says Varrin? He says, these words, "according to the idiom of the German language, mean nothing more than strong attachment, affection and earnestness, and are not to be taken in an ill sense. Well, then gentlemen, if it mean affection and earnestness, here is the word "defend" also included. Will passion and attachment protect and defend, and enable you to oppose an attempt you think ought not to be suffered or take effect? They will prompt to action; but all the affections in the universe, unless active, can never oppose nor defend. Well, says the gentleman, "they are never meant in an evil sense," "never to say, you mean to do what is evil or unlawful." I do not take it to be the character of evilly disposed men, when they mean to carry a point by force, to announce, "we mean to carry it wickedly?" Such is not human nature. If I mean to carry a point by force, I do not tell my neighbor, I intend to do it wickedly. Those who read plays, know very well how Shakespeare represents the persuasion of a person to commit a crime, he never places it in the right light which would probably disgust, but it is varnished over and divested of its unseemliness. When the king wishes his nephews murdered, did he say to Hubert, "go murder these boys"? No, he could not but have known that he would have resisted, but he says, "Hubert, you know these children cross my path in every instance." I do not say, that they declared, that they would do what they knew was wrong, but what the law says is wrong. It must, however, be put an end to in the bud, or else that law will be set at defiance. But says the gentleman, it is the common language between bride and bridegroom. I believe he is a batchelor, when he marries he will find that the bride will not be satisfied merely with his declaration of attachment. It is a declaration, "I will defend you against every attack, made by the husband to the wife; now if the husband should stand by and see a ruffian maltreat his wife, as a passive spectator, would

she not have a right to complain that he had cowardly violated his word ; and what a figure would he make in endeavoring to excuse himself by saying, " why I did say I would defend you, my dear, by my body and life, but by the idiom of the German language, it means nothing more than a great attachment for you. Would he not be covered with disgrace in acting in this manner ? Farther, in the declaration of Independence, the congress have pledged their lives, fortunes, and sacred honors ; I ask you, if one of the honest Germans who joined in this declaration, had been told, you Germans intend nothing by all this, for when you say, you will support this by your body and life, it only means in your language, that you have a great attachment for it, but will not lift a finger in its defence ;" what would have been the answer ? He would have spurned the idea. I deny that it is possible to reconcile what Varrin says with the words " defend" and " support." These words imply action, and it is impossible that they can mean merely a milk and water attachment. If you are to oppose, you are to act ; if you are to defend, you are to act ; it is impossible to give sense to these words without action being implied by them ; it is impossible that they should merely signify attachment. The words, says Mr. Rawle, do not alone support it ; I acknowledge it, if not connected with " defend," " support," and " uphold." If the English party had come there with swords, knives and guns, would not the corporation be right in saying, gentlemen, you have pledged yourselves to attain your object by your bodies and lives. The first part of Varrin's exposition, therefore, is nonsense and impossible ; and equally strange is his account, that it is impossible for a person to learn German from a dictionary of German and French ; we can certainly learn German from the French idiom ; why then can I not know the German idiom from the other side of the book ? It is plain to common sense. Then, gentlemen, I say the meaning of these words is obvious when you take them connected as I have mentioned. As to the latter part of it, when men say they will use force, they do not mean to say they will use unlawful force, but they mean to say, that they will leave it to themselves to decide whether it is lawful or unlawful ; this, the law will not admit ; you cannot judge for yourself, unless it were as in feudal days when the trial by battle was used, instead of that by jury.

Dr. Helmuth, respected and respectable as he certainly is, and no man could be more willing to pay attention to every word he says than I am ; what does he first say ? He gives us the distinction between the words " by," and " with ;" when you say " mit," he says it refers to the person speaking. I will not enter into a discussion with Dr. Helmuth, as to the idiom of the German language ; but I will say with my friend Mr. Binny, that when I declare, that I will defend my horse with my body and life, it would be ridiculous for me to say, but not to the jeopardy of your life against whom I will defend him. Is this merely a declaration of affection ? I have in my hands these gloves which are nearly

worn out, and which I do not at all value, suppose a man comes to me and says, "I will have those gloves, give me them," my answer would be, "I will not, if you had asked me for them properly, I would have given them, but, as you ask for them so peremptorily, I will not;" he insists upon having them, and I declare, "you shall not have them, I will defend them with my body and life." This, gentlemen, would certainly mean to the danger of his life as well as mine; otherwise it would be inconsistent; and I mean no disrespect to Dr. Helmuth, when I say so. He also says, that they look upon themselves as an oppressed church *ecclesia pressa*; but none have a right to say, that there was such a necessity as would authorise such a combination but the court and jury; if the English party had armed themselves with fire arms, and said, we will go into the church and take our minister to preach English, they then would have had a right to arm too; but if you enter into an agreement to use force, you must show the case was such as justified your opposing force; if when the threat was made, there was reason to suppose that there would be no effort but an appeal to law, it would be criminal for you to resort to force, and it would be equally criminal for you to say, you would employ force, as in the present instance.

With respect to Dr. Collin, I have a great respect for him, but I was surprised to see him return here, and undertake the task he had a few days before declined, thinking himself not competent to it; but as he did undertake it, I will examine his account of the matter. After saying, that these words do not import any meaning in an evil sense, he not only says that it corresponds with the idea of defending by force, but he used the emphatic word "*fight*," "that they would fight for the good cause if necessary." It is all the construction for which we contend, but these gentlemen reserve to themselves, to their own judgments when they shall think it necessary to oppose in this manner. They will not be satisfied with the decision of the question by an election; but whatever may be the consequence of the election, they will oppose the introduction of the English with their *bodies* and *lives*. May it please your honor, I humbly contend that though we did not interpose, it was not a proper question to be put to a witness, whether he thinks the writing imports what is unlawful; that is a question of law, but the question is whether it imports a declaration to oppose *force*. "Why," says this Doctor, "it may be in that sense, but it means that they will fight if it be necessary, it imports that they will lose their lives rather than the English should be introduced." When the Doctor said it imported that they would sooner lose their lives, I ask what is the meaning of that? I could demand nothing better for my purpose. If I say to a person, I would sooner lose my life than that you should do such a thing, is it not a declaration that his life is in danger, to whom I address myself? The danger must be mutual and reciprocal. Take all the page in connexion, and the words import a determination that they will oppose the introduction of the divine

service in English by force, with their bodies and lives. A strong expression, say the gentlemen; it is a strong expression, I do not know how a stronger could be adopted, better calculated to intimidate the other party. I am authorised by the observations of Mr. Rawle, respecting the animated nature of Schmidt, to assert that they are as strong as if they had been written in English, and contain a declaration that they would keep out by force, at the hazard of their bodies and lives, a minister, who even after the congregation has decided the question in favor of the English, shall attempt to speak in that language. An election, said they, cannot decide the point. There is one other word upon which there has been some comment made namely, the word "attack." When they declare they will defend it against any attack? What is meant by the word attack? In a civil community, where the law governs, if I bring an action against a man, I attack him by a civil suit; it is a common expression. They do not say, they will repel force by force, but every species of attack; that, as I consider it, signifies, that an attempt to introduce, in any way whatever, the English language, we will oppose, and for this we pledge ourselves to one another, with our bodies and lives. I shall not dwell any longer upon this part of the case. I will have to trespass much upon your patience before I conclude.

We are now to learn, gentlemen, from the books of the defendants themselves; we are to collect from their own declarations, a commentary upon this letter, which Cope calls a bloody petition. The expression is figurative, but indeed, gentlemen, it is not inapplicable; because if you and the court do not meet these kind of combinations in their origin, so as to discourage their repetition, they will undoubtedly be found to be written in letters of blood. Now, I say, we recur to the declaration, and to the acts, and to the writings of the defendants themselves as the commentary which we shall furnish, not upon what they shall now do and write, but what they did say and write at the time, which I will compare with this petition, and leave you to say, whether I have put on it the proper construction or not.

The two first witnesses in order of time I believe, are Charles Eberle and John A. Uhler. They do not fix the time of the two conversations, but they were antecedent to the election, and how long, we do not know. In these conversations, the parties had an opportunity to say, what they would do; and recollect, I now begin at a time, when it is not only provided, that the English party had not said or done one exceptionable thing, but it has not been even hinted that they had. I believe Eberle is the first, as my sight is bad, the particular paragraph may be much more quickly read by my colleague, than myself. "One evening in the spring of last year, I was in our school house—Mannhardt came in and told me, that the corporation had met; that Meyers's corporation had sent a petition to get leave to preach Irish in the school house at Camp-town; that some members of our corporation would favor it; and particularly Mr. Witman, Mr. Lex and old Haas—who would have

thought we would have elected members into our corporation of such kind, but they shall not succeed, these traitors!—About two or three months after, he came to my house in Sixth street, and said, the plan for Irish preaching in the Camp-town school house had been defeated—that he did not think they had voted for such men as Witman, Lex and Haas. I observed, that I was sorry, that the congregation was uneasy about it, but that I thought the members in favor, did not mean any harm by it, or had any bad intention in it. Mannhardt said, I know what the intention is: they intend to introduce Irish preaching into our churches; but, before that shall happen, blood shall flow. I said, O! O! Mr. Mannhardt, and he repeated, ‘blood flows.’ Then he said, ‘I once delivered a speech in the school house at Camp-town, by which I stirred up all the Camp-towners—I have it in my power to do it yet, and I shall do it again.’ Burkhardt, if I recollect, is also one who was spoken to upon the subject, and the kind of force I think is explicitly stated by him, as that which would be exercised. Speaking of Donneck, particularly, he says, “Donneck came to my house and talked about it and said, they wanted to drive the Germans from the church. I said, it could not be done, for a majority rules; he said, before it takes place, ‘*blood must flow*’; there was a great many would sacrifice their lives, and would do the same as they did once in London, when they wanted English preaching in the German church, and they rolled into the beer and the brandy, and had a fight, and they fought like fighting cocks, and the same they must do here; and if English preaching would come, and a preacher would go into the pulpit, he knew one Theobald Schmidt who would bring his hammer along, and hammer him out of the pulpit.” And one of the witnesses, I recollect, mentions by way of encouragement, that in England the violence was suffered to pass unnoticed by the government. Now gentlemen, here is an explanation by themselves of what they meant by force, the spilling of blood, the driving the minister out of the pulpit with a hammer; and what shewed, that this was by no means the thought of the moment, you find a supposed similar incident which took place once in London, is carefully treasured up as an example, and a precedent upon which to found their hopes of security, is given, that though they rolled the barrels of beer into the church and went into acts of great violence, it passed unnoticed by the government. I know nothing of the story, or whether it be true or false, but if the government of England, will suffer such transactions to pass with impunity, I trust that our courts and juries will not. What could have induced that government, to pass this over unnoticed, when they so severely punish in other instances, I know not; but I trust, in the commonwealth of Pennsylvania, a steady and equal hand will be held, and the courts of justice will be kept in an even, uninterrupted and impartial course, and where there are these unlawful attempts and these violent acts, they will be discouraged in such a manner, as effectually to put a stop to them.

In answer to a suggestion of my learned friend Mr. Rawle, that

we endeavor to press small matters with extreme eagerness; I ask your attention while I refer to proofs and evidence, which I say, are of resistless weight upon the mind. I do not solicit as a favor, the belief of the facts; it is not in the power of the human mind to attend to the evidence and withhold conviction.

This notice for the meeting of the English friends, was regularly prepared for the twenty-first of September, 1815, and was afterwards altered to Monday, the twenty-fifth September. You will observe, that the first movement, as far as we can trace it, of the friends of English-concerned for the benefit of the youth, was immediately preceding the twenty-ninth September. As a characteristic feature of the two parties, let me remark, that when the German party met from time to time, I call for that instance where the friends of the English ever resorted in numbers to their meeting, so as by their presence to cause an interruption, or even dissatisfaction; though on the other hand, when there is a meeting attempted by the friends of the English worship, it is the habit of the German party, not by individuals merely but in numbers to interrupt their meetings by blows, and sometimes to break them up entirely. It appeared, that the German party had agreed to meet upon the same evening that was first appointed, in order to avoid collision, the gentlemen, friendly to the introduction of the English, postponed their meeting until Monday the twenty-fifth; it happened unfortunately that the German party postponed their meeting also to the twenty-fifth, and of consequence, (I presume it was unintentionally,) they happened to meet on the same evening, it is said without design, and not knowing the others were to meet. We hear in the argument of my friend and learned antagonist a description of the conversation between the parties, and the nature of the badges—Is this an extenuation of the act? I take upon me to shew, that bloody petition was written when on the part of the English party, not one circumstance of provocation had occurred of the slightest kind. Their meeting was postponed to Monday the twenty-fifth; before the twenty-fifth came, this petition was prepared for signatures, and some signatures were to it, days before the friends of English preaching had even ventured to speak of the subject. They had anticipated them, and such was their rapidity of proceedings, you have from the testimony of Dreer, that it was exposed for signatures, and a number of signatures were to it three or four days before the meeting of the English party on Monday the twenty-fifth. If I am right in this great leading fact, where is there the slightest extenuation? But, says Mr. Rawle, where did you get the paper? Now really, are we to determine whether the writing is criminal by imputing to Wœlper a crime in getting it out of the desk? Certainly, it cannot weigh a feather upon this occasion, if Witman has acted unlike a gentleman; let them tell him so; if he has acted criminally, prosecute him. This paper will not allow extenuation, and there is no circumstance of provocation, as early as the twenty-third September at all events. What is the complexion of this paper? What is to be done by

those who signed it? Oppose the English party by force; and we find in consequence, on the very first evening of their meeting, they are opposed by force, interrupted by force, and their chairman obliged to abandon his chair and get out of the back door as speedily as possible, to avoid worse treatment. At the meeting of the twenty-fifth September, Schmidt and Mackie without any provocation whatever, not only insulted and abused Mr. Lex and Burkhardt by the most insolent language, but also struck them. I say, gentlemen, I will demonstrate this to you so clearly, that it will not be possible to entertain a doubt, and I am wholly mistaken in the evidence on this point, if I cannot. As this is all important, for if I am mistaken in this, it will change the course of my argument most essentially, allow me to trouble you with hearing some of the remarks of the witnesses on that meeting, and which I will pledge myself are as clear as possible, and not contradicted by a single witness on the part of the defendants. Burkhardt says, "on the twenty-fifth September, as I went to the school house where this meeting was held, there was a great noise; the cry was, 'are you Irish too, can't you talk no German?' Proposals were made to lay before the meeting, that the English might be introduced with the German, to keep the youth together, that the church might not be destroyed. After much confusion, I got up and mentioned, the thing was not rightly understood, and Schmidt got up and said, 'you damned Judas, did you sell your mother language like Judas did Jesus, take a rope, make it round his neck and hang him.' A person of the name of Jacob Knoss made use of the same language. I stepped forward and said, what do you mean, I am for German as much as you or more; he said, 'we know you.' Speel came and said, 'you better go home.' By that, one John Mackie came up and struck me on the face, and I went out the back door. Mr. Lex was struck that evening by the same man." Witman says, "after we had been in business, a number of persons came in posse, saying, 'some of us were traitors; that they could not understand Irish, that those in the corporation had sworn false oaths.' Burkhardt addressed them and said, 'what they did not understand would be explained to them if they would have patience.' He was called a Judas, a traitor—that a rope should be brought and he should be hung. There was considerable noise and confusion afterwards—we went some one way, some another." Busch says, "the noise was so great, we could do no business, we could not hear one another. One Mr. Burkhardt, a member of the congregation, wanted to step up and speak to them to be in peace. Christian Schmidt went up to him and said, 'you deserve a rope, you ought to be hanged long ago—you have sworn a false oath, perjured yourself, and ought to be hung.' I saw some fists going to strike, some of them struck, but I did not see who. So in fact we had to break up our meeting and no business could be done." Wagner says, "we had just commenced, when I heard a noise, and saw from twenty to thirty people enter—they placed themselves near and about the door. Some came

forward and stood near the desk till a motion was made; they there disturbed us with noise, crying out "aye," and "no," to every question. Many went up in an indecent manner to the chairman, with hats on, &c. It continued that way the best part of the meeting; it was impossible to take a question. In a riotous manner, near the close, they used threatening language and gestures. Schmidt was one, and Schwartz. Schmidt said to Burkhardt, that he had turned Judas, and deserved to be hung. Soon after that, the noise and tumult became general, and we found we could do nothing, and had to go away. Many, I among them, went the back way. I did not think it safe to be among them.

There are therefore, four witnesses who support expressly my position to its full extent, and this is the first act after the subscription of the letter, which is the foundation of this indictment. Now, gentlemen, these four persons have sworn expressly to these acts of abominable outrage; and many a man has lost his life upon a less provocation than was given by Schmidt or Mackie, that night. Let me stop one moment and consider whether such acts ought not to be reprobated in our courts of justice, for in our country we have no executive with a great standing army to enforce the laws, this our juries must do, if they cannot, it is impossible that the law should be regarded. / I ask you, you may possibly recollect, what were the beginnings of the French revolution? I mean the outcries, for with regard to grievances they were real, and reformation was necessary, and let it be a warning to all the friends of liberty throughout the world, what made it a despotism, but violent individuals taking into their hands the execution of the laws instead of leaving them to take their course? What was the watchword then at Paris? "*A la lanterne*," there was nothing more at the commencement; this was sufficient to take the suspected individual, and he was hung up at the next lamp post. On the present instance it was, "you are a traitor, a Judas who ought to be hung." It is said, that Busch is incorrect, I do not rest it upon his testimony. What objection have they to Burkhardt? What to Witman? Whatever they say to his conduct on the day of the election, his veracity is not impeached. What do they say to Wagner? His probity is not impeached. What do they then put in the opposite scale to counterbalance this testimony? Nothing; I went last night through the notes of my son and Mr. Keemle, and I can with confidence state, that of all the witnesses brought forward on the part of the defendants, there is not one contradicts those on the part of the prosecution, as to the blows and irregularities of that evening, which caused them to break up. There is not one who said he staid the whole of the evening. Dreer is the first; he did not stay through the evening. Brandt was there; he did not stay the whole evening. Ludritz does not say he staid through the evening. Bealer and Kipple, were there; they do not say they staid through the whole evening. I think every one of them but one, say expressly, that they were there some time, and then went away; there is only one who does not

mention it, and he does not say, he staid there till the conclusion of the business. Then on the one side are four men of veracity swearing expressly to these acts of violence, and not contradicted by a single person, who says, he was there, till the conclusion of the business that evening. Some say "we were there when these resolutions were considered, when a debate was between Leib and Keemle," but recollect upon Dr. Leib's representations the resolutions were altered; whatever was violent and exceptionable, was changed and moderate language substituted. They say, they were there when this took place, so they might be, these resolutions were passed, but in the latter part of the evening, the noise, turbulence and violence was so great, that the chairman abandoned his chair, and retreated out of the back door, as did several others. Ripberger, to whose character Mr. Rawle bears honorable testimony, told you, he thought it not prudent to go out of the front door, and went out of the back door from fear, and he is not so diminutive in size, or so poor in spirit, but he would have gone out the front way, if there had not been good ground for fear.

A committee was appointed and made their report and representation to the corporation; my opponents talk of comparison; I meet them, we do not deny it, you shall hear it, gentlemen, and compare the address from the friends of English preaching, with that, from those who said they would oppose its introduction with body and life. (*Reads the English Address, vide Appendix.*) Not one word, did my learned friends point out as exceptionable in that letter. At the first meeting, Dr. Leib took exception instantly to the least appearance of violence, dictation, or peremptory asking for their rights; he took care, that calmness should be its characteristic, and the committee, of which he was the chairman, was appointed, and no address could be more respectful and dispassionate.

We approach an interesting period indeed. On the next day, Busch is to carry that petition to the corporation: when he approaches the room where they met, in the steeple; what is the appearance? Something unusual, something alarming. When he enters, he sees a man with a weapon in his hand, of a very formidable nature, though not a sword, I think they call it a "cord stick of wood." This gentlemen, is the first symptom; what follows? On this day there had been a conversation between Uhler and Mannhardt, in which Mannhardt said, "a document will be laid before the corporation, with a considerable number of signers, and that not half an inch must be given, otherwise *blood must flow*." This was within half an hour before sunset, "if half an inch be given, blood must flow." Really, gentlemen, without affecting any particular degree of sensibility, is it not enough to make a citizen, who is accustomed to the common circumstances of life, almost shudder at hearing such sentiments expressed by Mannhardt; a man of his influence. There is no room for equivocation here; we have no dispute in this; about *present* or *future tense*. It is an express declaration, that if the corporation

give way half an inch, blood must flow. Who did he say it to? To one of the corporation; to one of the friends of English preaching. Will any man who can claim the least share of candor, say, this was not calculated and intended to intimidate? To prevent that man from exercising his judgment, free and uncontrolled, with regard to the petition? Shew me an instance in which an individual would say, "if you give way half an inch, blood must flow," and he might as well have said, "if you give way half an inch, your life shall answer for it. This is addressed to a member of the corporation; and allow me to mention another circumstance. The constitution of the commonwealth of Pennsylvania, in its ninth article, I believe, declares, that the "citizens have a right, in a peaceable manner, to assemble together, for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address or remonstrance?" I consider that provision as extending and governing within this society, and at all meetings for congregational purposes as well as at those for political. I trust I shall not be told, that congregational are not as important as those of a political nature; and the commonwealth is pledged, that those who peaceably assemble to take into consideration important matters, shall be secure; it is not in the power of the highest officer in the state to intrude upon them, and if it be not in the power of the highest, it can not be in the lowest. These two petitions, the mild, moderate, and modest petition, prepared by Dr. Leib, and the bloody one, prepared by Mannhardt, are both presented, and the corporation talk of giving an answer in three weeks, which to the present moment they have never dared to do. The very room itself is not secure from this kind of language and menace. After having stated it to you, Dreer had made use of improper language, I did understand him, again and again, in the different ways, in which the question was proposed, to declare, he had not said to Harris or any person, that the gentlemen, who met on Monday, might thank God they had escaped with their lives; and Mr. Harris himself, comes forward, and clearly and explicitly testifies to the fact. He says, Yaeger said, that some of them had been going about to persuade the members to petition to get English preaching; then Dreer said, "they may thank God they saved their lives in the school house;" I then told him, "that he must possess a great power to do so;" he replied to me, that, "he could not do it, but there was enough would have done it, if they had not been prevented." You observe, gentlemen, this was at the meeting of the corporation, where, this menace, as it was intended; took away all freedom of action, and nothing was done with regard to the address; no answer was given; they did not dare to give an answer. On the sixth and ninth of October, the German party met, and they give another specimen of the manner in which they address this constituted authority. It was addressed to the corporation on the eleventh, but the meetings were on the sixth and ninth. I pray your atten-

tion to this. I assert that the German party, in the letter they sent on the eleventh, to the corporation, did more than the king of England dare do with his parliament. They take upon themselves a greater authority than he dare exercise with the parliament. They do declare, and they introduce it with an assertion, of which I see no evidence, that there was a resolution that they should speak in English; they tell them that if there are persons there, friends to the introduction of the divine worship in English, they consider them as no longer constituting part of that corporation; the corporation which, as my learned friend says, was the representative of the congregation; that they consider the number of the corporation as deficient, and from that day forward, they will not regard their acts in any way whatever. Now, pray observe, this is on the sixth or ninth of October. The answer to these petitions was expected in three weeks; before the expiration of these three weeks, these men, thus declared to that constituted body, from which they were to receive their answer, and to whom their humble petition is addressed, that any thing they can do or say, unless as they direct, is all void and of no effect; and in one part of that address the word "*dare*," is frequently used. Now, gentlemen, I do not know how it may affect your feelings, but upon my word, I do not wish to make invidious comparisons, between those who are heads of families, and those who are not; between those who are, as Dr. Leib is, descended from persons, who assisted in building these churches, and those who are not; but that a party should tell the corporation of the church, "we dismiss you, you are no longer able to exercise your duties, is an effort of arrogance, I cannot think of without emotion. If, gentlemen, you say this is all innocent, do not hereafter complain, if a constituted authority, of which you shall be members, be treated in the same way. Depend upon it, the only way to prevent these things, is to take them at their first appearance; if they are taken at their origin, they may be checked, but if allowed to attain their full growth, it is almost impossible to put a stop to their progress. It deserves to be noticed both in and out of court, that those persons, who were possessed of all the corporate powers, under the charter granted by your general assembly, are addressed in this manner, we wrest the power out of your hands, you are contemptible, and we dismiss you from our trust and confidence.

On the evening of the thirty-first October is the next meeting, mentioned by the same witnesses to whom I before referred. At this time, when the English party, (I call them so for the sake of brevity,) went to the place appointed for their meeting, their seats were occupied by the German party so as to prevent their proceeding in their business; and this important fact is not contradicted by a single witness on the part of the defendants. They had to break up, and their whole object proved abortive. Well, but says Mr. Rawle, you were trespassers there. Really, he must have been hard pushed for an excuse, when he advanced one

so lame. When they went there, I adopt the language of my friend Mr. Levy, they were tenants in common; and if you and I are tenants in common, have we not a right to enter upon our property whenever we please? How is it? Take an instance in common life; here is a house of which we are joint owners, and which we set apart for particular purposes; but which we may at any period enter; suppose I had made an appointment to go there on a particular evening, if you were to interrupt me, would it not be very wrong and ungentlemanly, especially if there was another place to go to? If one appoints another to meet him at a particular person's, for a particular purpose, another man would not have the power, surely, to go there and interrupt him. And we have it in evidence, that when they agreed to meet on the twenty-first, and found the other party were to meet there on the same evening, they themselves said, it must be of unfortunate consequence if we meet on the same evening; yet, these very men, are the identical persons who go there and do interrupt them.

The second meeting was appointed, and these peaceable men, except once more, never attempted a meeting in the city of Philadelphia. The district of Southwark and the Northern Liberties were open for them, and they would rather go that distance, than meet those dangerous antagonists. They did, however, meet once, and they were allowed to go on so far in their business, as to make this address. It is too long to be read; it is sufficient for us to say, that no part of it has been found fault with, except the expression of sackcloth and ashes. I believe, Mr. Rawle did refer to another page, but I cannot find the paragraph he thought culpable. As to the terms, sackcloth and ashes, I cannot think a threat of force is conveyed. The question was peculiarly interesting and the interests of both parties deeply involved; if a false step should be taken, it would undoubtedly involve them in distress and difficulty; the meaning of the expression there, then, is, that they would deeply repent it. This I would suppose, the party would have reasonably expected, for though they petition the corporation, yet they do not consider themselves free from danger, they look forward fearfully to what will take place, and these gentlemen at that time appeared to be most sincerely sorry for the conduct they have themselves been pursuing. With regard to any threat, it is not in the slightest manner to be found in that pamphlet. From the twenty-first October to the twenty-first December the time passed without any thing occurring deserving observation, except on the second Monday of November, when was held the meeting of the county society, which I believe consisted of thirty, and I believe there were present only thirteen. The extraordinary behavior of Mannhardt at this meeting deserves notice; although they so loudly speak against the sergeant's guard, and Mr. Rawle says, it is well it was not a regiment or battallion that accompanied him, it was certainly a company, although not quite so large as a regiment or battallion. Mr. Krebs's testimony respecting the fact is, "in November, the second Monday, I was at a meeting of the

charitable society composed of members of the German Lutheran congregation. After opening and in the height of the business, Charles L. Mannhardt came in at the head of a number of men, may be one hundred or one hundred and twenty. He addressed himself to me—he was not a member of that society—he had been once and declined—he said, Mr. president, I introduce to you a number of good and real Germans and wish them to be taken as members of this society, they being members of the German Lutheran congregation, I objected to the motion on the ground, that they were not orderly members, and that Mannhardt had not characterized them properly. I being opposed and finding myself in an awkward situation, being used to having order and decorum, I proposed, that if a real member would make a motion, which would be seconded, I would put it—that was done—there were not more than thirty belonging to the society—when I put the question, they all voted themselves in a loud voice. After they had been voted in so, I took the liberty to call them to order. One of the self-elected members then came up and put himself in an attitude of fighting. Almendinger came up to the table and in broken English said, ‘Mr. Krebs the next election,’ with doubled fists. One or two of his friends asked him to withdraw, and he did soon after this. There came one more direct to me, named Christian Schmidt, who addressed me in these words: ‘Mr. president, if we can’t gain the next election for church wardens and elders by fair means, we will take the command of our Saviour, and smite with the sword.’ Now, may it please your Honors, and gentlemen of the jury; here is a direct threat, with the clenched fist, that they would take care that things should go according to their will and pleasure at the next election; and it is to be noted, that Mannhardt, the creator and author of that exceptionable paper was present and encouraged this violence. This Almendinger, I pray your Honor to recollect, who was to carry every thing at that election, was the very man, who was not a member of the vestry, and remained within the enclosure all day, though Witman, who was a member, having taken that liberty of going in and staying, they called out, “tear him out by the hair of his head,” and Almendinger remained there unnoticed, though it was, as Mr. Rawle contended; exclusively appropriated for the inspectors and clerks.

Observations crowd on me as I proceed. Recollect on that day, we are told, the whole mischief arose from Witman’s motion. Who appointed the inspectors? The president of the vestry. Did not this very party declare on the eleventh October, that from that time, that corporation could not do any legal act? If it ceased to be a body on the twenty-fourth October 1815, how could it authorize their president to appoint the inspectors subsequently? No, gentlemen, here is an absolute inconsistency; and on the twenty-eighth December 1815, the question comes forward with regard to the repeal of the bye-law. With regard to the bye-law, what is the reason there is so much mystery and obscurity—we had the book here, why was it not shewn on record? I understand that

there is nothing in that book to shew, that they ever passed such a bye-law on the twenty-first December, 1805. Oh! but says the gentlemen, it is entered in another book; but, gentlemen, you have no right to consider it a bye-law at all until you see the record and evidence, that it was passed with all due formality. How was it passed? Was it subscribed by Mr. Wœlper the president? Am I not correct in saying, if I am not let me be put right; but I am instructed to say, there is nothing in the book of minutes to shew there ever was a bye-law of the kind. Mr. Keemle and Mr. Rawle went over it together, and it was their joint opinion, that with regard to the notice, there is not a syllable, yet the charter expressly requires, that notice shall be given to all the members. How is it that these same gentlemen are so extremely tenacious of what is in the charter, and this cannot be found, and what is found, it is entirely disregarded. The bye-laws are to be passed in a particular manner, with previous notice; there is not a tittle of evidence of the kind. You must presume it, says the gentleman; juries may presume, but there can be no presumption without ground. What reason is there to presume it? They say, there was a practice; for what time? Why a practice for a few years. But a very few years passed before it was called in question, and there was an opinion given many years ago, by one of my predecessors, and conjecture from the date by Mr. M'Kean, that such bye-law was void. There was never a doubt, it was acquiesced in, says Mr. Rawle; it was repeatedly doubted; and was there not great reason for this doubt? and upon this occasion the doubt was such, that they were nine to nine; and Honey having voted both as a member and also as the president. It is according to parliamentary rules I acknowledge, I yield to it and in my opinion he was right, but it was so doubtful on their minds, that there were nine for it and nine against the repeal. May it please your Honor, I conceive it perfectly clear, that this bye-law was an encroachment upon the rights of the congregation. This, however, is not strange; let power be placed where you will, there is an unceasing effort to increase it. It begins in the body at large; all the body has the right to appoint the inspectors, and Lex says, "for thirty years it was the practice for the congregation to appoint;" a longer space of time than is necessary to give exclusive right to land, without a deed or writing of any sort; yet for that time it was the uninterrupted practice for the body to appoint. I address it to you and his Honor; I wish to submit to your consideration upon principles of common sense; I say, examine it when you will, and wherever power is vested in a body at large, there is always a plausible reason, why it should be taken from them and given some where else; first from the many to the few, and afterwards from the few to the one. This is not only the great scene exhibited in Holland, but in every corporation, great and small, it goes through every one of them; the encroachment is general. I submit it to you, my argument is, wherever a power is to be exercised by the body at large, and there is a mode of doing it, necessary for the enjoyment of the right, and officers

are to be appointed for the enjoyment of that right, the appointment of them is vested in the body. The principle is exemplified every year in our election at the State-House. Where there is an express grant, there is no need for implication. There is an express provision how the general election shall be conducted as to the choice of judges by inspectors; but as to the appointment of judges of the ward elections, there is no provision; and no man ever had a doubt about it. When we meet at the ward meeting, does the constable ever say, "gentlemen, I will save you this trouble, I will appoint the judges of the election." Would his proposal, do you think, if he were to make such an one, meet with a favorable reception? Have not you and I, stood frequently on different sides and been counted off by the constable to know who was appointed; and does not every voter participate? Undoubtedly; because it was vested in us, who were the electors, to say, who were to be judges. There is no such refinement as Mr. Levy mentions, that you must have the power expressly given or it cannot be exercised; the constable has very little to say in this case and yet he exercises the office of judge of the election, for judges of the ward election.

I did give my opinion as a lawyer, not as a public officer, that the congregation should vote for the judges; my friend says, this was an *ex parte* proceeding; it is true, but I have now seen all the papers, and have heard that bye-law read, and I am confirmed in the opinion for the reasons I before gave, and I contend, that the body are the electors, and unless there is an express provision to the contrary, the appointment of inspectors of their election must remain with them. The question is, where is to be found in the charter, a provision to the contrary? Or where is the implication to the contrary? In two respects, they say, is the corporation authorized; the corporation is to appoint its officers and also to make bye-laws for the due regulation and the good government of the congregation and corporation. The same powers are granted to the coorporation in all charters, whether made by the general assembly, or by the attorney-general and the supreme court; all contain that clause; and if they did not they would have the power by implication; for, that moment they receive an act of incorporation, they have this power. It leaves the question still for discussion, have the congregation the power? I do not agree with my learned friend, that it is a matter of little importance; it is of great importance; there are great opportunities of committing frauds, if those gentlemen who compose the corporation, are not honest men—opportunities for increase of party power, if not capable men, and if not active men, there may be a negligence and inattention to their duties; therefore it is a matter of importance, that the will of the congregation should be distinctly known in their election. They have the power of appointing the judges, which may be inferred from the other parts of the grant. In the eleventh section of the charter, there is an enumeration of the powers of the congregation expressly commensurate with this power; but, says Mr.

Levy, the powers are enumerated in the eighth section in the old grant, and that this is not so in the new one. Be that one way or the other, be that as it may, it appears to me a confession; it is sufficient for my purpose, and in that section, the congregation have the power vested in them to appoint the judges of the election.

If correct in this, is it possible that this bye-law could divest this right, and vest it in the corporation, and that from them it should be transferred to the president? By no means; nor is there so great a necessity for it. How great is the number of that congregation? five hundred and forty voted in favor of one side, and two hundred and forty on the other; not so great a number, but that they might have appointed their inspectors without inconvenience. I therefore conclude on this point by saying, that as the legislature of Pennsylvania; for it seems, after the revolution there was reason for some alterations in the original charter; and by the way, this was a confirmation, that the judicious Germans did not intend to bind themselves to any inexpedient rules; because they had not to apply to a distant parliament, but to the legislature with whom they could speak and converse with greater freedom, and with whom their requests would meet with greater attention; and if from the year 1765, to 1780, they had an opportunity to reflect upon this subject, and then they had an opportunity, if they wished it, to bind themselves that none but the German language should be preached; why did they not say so, when they were making their alterations? It was to the legislature a matter of indifference; the assembly would have been pleased at that time in satisfying them; there was not a hint of the kind; but on the other hand, it is given in the same broad way as in the original charter, leaving it to them, to introduce the English preaching at any time, or exclude it forever; in their hands it was left, and in their hands, I trust, it will ever remain and no force shall be allowed to wrest it from them.

Adjourned.

SATURDAY, 20TH JULY, 9 O'CLOCK, A. M.

JARED INGERSOLL, Esq. *in continuation.*—I wish, may it please your Honor, before I proceed to the remaining, and to, what in my opinion, are the less important points of the case, to have that matter of the bye-law perfectly ascertained and understood. Until passing the bye-law of the twenty-first December 1805, for thirty years the practice had been uniformly, that the congregation appointed the inspectors, the judges of the election; but after the passing of the bye-law, there has been frequent variation in the practice under it, and no wonder, for the very words used, stamp the character of ambiguity upon it; it is doubtful whether the president is to nominate only, or appoint absolutely; and no wonder therefore, that in consequence of the expression bearing the two significations, there was a variation in the practice under it.

Sometimes, and I believe generally speaking, the president only nominated in the corporation; in other instances he nominated in private, the corporation not knowing any thing about it. In the present instance, Mr. Honey called at the houses of these two gentlemen, Hœckley and Lehr's, and mentioned to them, that he considered them, and meant that they should be and act as the inspectors at the election. From the time that the charters passed, the original and supplemental charters, the construction for which we contend, was uniformly, that the congregation named the judges and inspectors of the election; this assertion is fully confirmed by the evidence. I said, yesterday, there were some preliminary matters, immediately preceding the election, which I thought deserving of serious attention. I refer to the appointment of the committee of vigilance, and the preparing liquor for the election. I do not mean to urge any thing to an extreme, every part of the case shall be considered in the most reasonable manner. I will not undertake to allege, that an appointment of a committee of vigilance by the German society was strictly of itself unlawful or exceptionable; provided, it had been done otherwise, than as a great aid of the determination of carrying the ultimate point by force. By and by, in a subsequent stage of the cause we will see, what number of that committee, whose duty, it is said, was not to collect votes, but to preserve good order; I will have occasion to see, what number of that committee were among the rioters of the day. Respecting that committee and the providing the liquor, there was the greatest impropriety; and the earliest opportunity ought to be taken by the courts and juries, decidedly to mark with disapprobation every thing of the kind. By way of apology, reference was made to the practice of our elections, at which they have refreshments and liquor. No doubt, and if at the expence of the congregation, liquor and provision are furnished to the inspectors and clerks, who cannot leave the place during the day to get them, I find no fault. But I can safely make the assertion, that Mr. Binney would sooner loose his right hand, than eat and drink at the expence of a party at an election, when he officiates as one of the judges; the county commissioners provide for the gentlemen who are engaged in the public business; but that the judges of an election are to eat and drink at the expence of a particular party, the thought, I believe, never for one moment was entertained.

MR. RAWLE. Did not Busch carry beer in, to the judges at that election?

MR. INGERSOLL. May it please your Honor, that is an argument, such as that which people frequently make, when blamed for bad conduct, "I am not worse than my neighbors are." But if he did do so, they cannot vest in themselves any virtues, taken from the characters of others. This liquor was prepared by a party, and I confidently trust, our courts and juries will put their veto upon it, in such a manner as will put an end to it. Consider well what will be the consequence if it be not nipt in the bud; I hope it will be at a very distant day, that elections will be cer-

ducted according to the practice of England; but in that country, if a candidate give a mug of beer to a voter, *ipso facto* the election is void, to all intents and purposes. Now I ask, was not Hœckley a candidate at that election? Was he not a member of that German society, who were at the expence of the refreshments, the provisions and liquor? Was he not, as a member, to contribute his proportionate part of the treasure, and therefore a paymaster of that day? When you are deliberating, you will consider this, gentlemen, I make no comment.

This is the way in which the election was carried on; and a mode of very dangerous consequence indeed, giving a character to the proceeding, and an expectation of what would take place. These circumstances having preceded the election, that election, generally speaking, from its commencement to the conclusion was a scene of turbulence, riot and gross impropriety; I acknowledge there were ebbs and flowings of the tide; but still, throughout, there was a scene of gross impropriety. When I say this, I lay aside all that the witnesses of the prosecution have said; I found my observation upon the information of the defendants' witnesses themselves. Houser was called to give evidence to the passing of that bye-law, which declares in very strong terms, that nothing shall be found on the ticket but the name voted for. That this is its import, I can say positively. I believe there is one of your number, gentlemen, will be able to say, whether I am right or not. Houser, was asked with great confidence by the other side, the question, "was not the election uniformly quiet?" "It was," said he, "the most ridiculous I ever saw; the two parties were in a situation to fight." Was this disposition to fight in consequence of the strong drink provided by the committee? Was it not the duty of that committee to have allayed, rather than have excited this ferment? Thus they are met upon this ground; and it is not necessary, but I can shew, that including Uhler, upon whom they particularly put the charge of violence, there was no act of the friends of English, which had the least tendency to disturbance. Mr. Witman remained there throughout the day, reproached, menaced, and frightened, at least so much as to disencumber himself of his coat, and was there from him one word intemperate, or any thing that would give the least occasion or encouragement to riot? The question recurs of what was the beginning of the riot; who set the example of disorder? I meet the gentlemen with cheerfulness; I say, they began the disturbance. Mr. Lex came in, and no provocation can be said to have been given by him, except that he was one of the Irish party as they were called; not one offensive act was done by him, not one word escaped his lips, he had not even ventured to look unkindly upon a man there; what was the language used toward him? "Kick the rascal out." He was one of the vestry and had a right to be within the enclosure, and while Almendinger, who was not of the vestry or church wardens, was within it the whole day, this gentleman, who came in thus early, when the place was not at all filled, was treated as if he was worse

than the criminal they brought from the jail to vote upon this occasion. Well, gentlemen, I say therefore, they begin with Lex, and he was so overawed and intimidated with his reception, that, if I recollect a right, he left the house immediately; he thought it prudent to disappear from the ground. Then we fix it beyond all reasonable controversy, that the beginning of the irregularities on that day, was by those who had the badge in their hats, a badge very honorable and which should always be treated with the greatest respect, and never used but in an honorable way. While the accounts were reading off by Mr. Long, the treasurer, as I recollect, without waiting for him to finish, Dr. Helmuth, saw and apprehended something or another that induced him to interrupt him, not waiting till the reading was finished, but to interrupt him by a recommendation to the people to keep peace and good order. Whether it was what had happened to Lex, or not, I do not pretend to say, but there was some strong impression upon his mind, that induced him to say, he wished them to keep peaceable and orderly. The accounts were read—no inspectors had been appointed to the knowledge of the voters then convened, or to the knowledge of the corporation. In the corporation there had been no nomination; nor had there been in the congregation. At this time Witman arose, gets upon a chair and proposes a question, which is represented as an offence, which was the cause of all the riots that took place afterwards. Let me examine for a moment. A bye-law was passed, which was considered questionable; and on the other side, they have not shewn, that it was passed by the corporation. If they did suppose, they had a right such as they assumed, after all their time for preparation, Witman proposes to the congregation, the question, whether they will appoint the judges, and annul the bye-law. What offence was there in this? To whom was the question to be put, but to the congregation? Are they not to judge whether their rights were infringed on, or not? But, it is said, they acquiesced for many years; by no means; it was not acquiesced in, without an objection, without interruption. It had not been in operation one year, till an opinion was taken upon its illegality. But say they, Witman ought to have known, that to repeal a bye-law, two thirds were wanting. I have seen nothing of the kind, heard nothing of the kind read; but if the bye-law was unconstitutional, it needed no repeal; it was but a blank piece of paper. How happened it that they who are so strenuous supporters of bye-laws, when there was another bye-law, disregarded it? The bye-laws relative to badges was disregarded. They say their tickets were not open; not always we allow; but pray gentlemen, if there is a badge of a party, and if the party has carried its judges, would it not be an opportunity for fraud, if the judges knew by the badge, when their party came to vote? Undoubtedly; and therefore it was reasonably intended by this regulation, that a hint should not be given to the judges; otherwise the voting by both parties would be ridiculous. This bye-law was totally disregarded, and this was the only one at all to be considered as impor-

tant. Taking this question, was what is considered, wrong in Witman, and why? Could he not take the sense of the congregation, whether it was void? I say he might; and if he thought it was void, it was his duty to do so. He would have been faulty if he had neglected it. A great deal has been said about his seeing the names upon the paper, and therefore that it was an improper interruption. Not at all; if he thought there had been no appointment by Mr. Honey, at that time, he ought to have taken care and prevented him from doing that which was illegal. And pray, what would we have heard, if he had waited till Honey had appointed his inspectors? Then, it would have been a matter of reproach, that he knew by proposing it at such a time, it would create confusion. I say, he did nothing but what he was entitled to do; he had a right to appeal to the congregation, whether they had a right or not to appoint the inspectors. Suppose a constable at the ward election were to propose judges, would not a citizen, be right in saying, "will you have the nomination made by ourselves, or by him?" Undoubtedly. But says the gentlemen, you took us by surprise. Why, surely when the Germans, upon every occasion, say "you are a damned rascal," it is not a very great encouragement to us to make communications to them, when we must expect nothing, but you are a damned rascal, in return. Therefore, Witman did not propose it to them, and you do not find that he proposed it to his own party. They vote, however, the Germans do not say this is an irregularity, and we will not vote, they join in it and vote upon it, and what was the result? The witnesses say, there was a great majority for the appointment by the congregation; on the part of the defects, there are only one or two, who undertake to say, that the majority were on the part of the president, but many say it was impossible to tell on what side was the majority. A confusion, it is evident, did arise, and I am willing to allow that it was impossible to tell, and therefore it is equally uncertain, on what side the majority was. Surely if this be the case, there is no great fault attached to it; Witman made the motion, and afterwards Honey nominates the men whom he had appointed day before; at least he calls them into the enclosure to take their seats as inspectors. We will suppose this was an appointment; but it is clearly in evidence that he had not done so before. We will enquire for one moment into the nature of this enclosure. It seems that this enclosure was built some years since, by the German society, that the vestry might not be pressed upon by the crowd. This was of the most improper tendency, and encroaching consequence. The corporation had no power to make an enclosure in that school house, and say, we will oppose by force any person who shall attempt to come in here; they had no such legal right; and they ought to have known, that it was left to the discretion of any to come in or to go out as they pleased, and it was not in their power to impede them; they had no right to oppose the entrance of any one whomsoever. If they did, and a life was lost in the scuffle, I would ask if it would not amount to murder in

the first degree? I refer to the statements of their own witnesses, when I say, that it was doubtful which way the majority was; more than one of their witnesses say it was doubtful, being thus uncertain, it was natural, that each of the parties should think that they carried it. What is the offence for which the life of a man should be hazarded? When a man was called upon to take his place; when they were confident that Wagner was regularly chosen as inspector, and therefore was called; instead of having a conference upon the subject, or of arguing the point; the cry is immediately raised, "there is an Irishman," and instantly they endeavor to carry into effect by force, the nomination by the president, in opposition to what may be said to have been the nomination by the congregation; not entering into any altercation about it; but the moment Wagner endeavored to enter, he was seized upon, as if he had been committing some outrageous trespass, as if he had been a fugitive from justice. It was said on the other side, that there was no injury done to him; I say otherwise; the man was in serious danger of being killed; some one had him by the neck, and he was so far choaked, that he exclaimed in great distress, "for God's sake don't choak me." He does not appear such a child, that he would have thus exclaimed, unless there had been danger of his being choaked, and I fully believe, that he would not have exclaimed in that manner, unless he was in serious danger. Witman tells you expressly, when he got over the railing, he was tumbling and exhausted. If when a man endeavors to place himself in a situation to which he was entitled, instead of reasoning upon the subject, there is a recourse to trial by battle, there is immediately an end to fair elections. If his life had been lost in the struggle, the most melancholly consequence would have attached to him who opposed him with such violence. This affair being over, the English party resign their pretensions and go on without any further disturbance arising, we believe, on their part. What is the next offence imputed? We have seen nothing wrong in this, and the peace officers would have been justifiable in taking those into custody, who attacked Wagner, and committing them for trial for this unprovoked aggression. Witman takes the unwarrantable liberty of standing within the enclosure, and observing the voters. He was one of the vestry, and he had a right to be there. Ah! but say they, he was so near that his elbows incommoded the inspectors. Now is it possible for any one to wink so hard as not to see, that the looking to what was the qualification of the voters, and who were allowed to vote, was the real offence for which he was insulted? After a little while, the book in which he made his memoranda is taken from his hand; and it is declared, that when Uhler interposed and did what is imputed to him as faulty, it happened at that time, a man was going on with a peculiar threat, of tearing his hair out of his head, and Uhler took hold of the man who was going forward to put his threat into execution, and prevented him. But say they, he drew back his hand; perhaps so—it was his duty to defend himself, if the man

assaulted him. Pray gentlemen, let me now ask, what is the reason for finding so much fault with Uhler in that business? Certainly every man who sees another, about breaking the peace, is bound in duty to interpose; and the moment Uhler was satisfied, that the man did not intend to put that singular threat into execution, he quits him, and is not seen, though he staid there all day, doing one thing improper. We are told there was great irregularity in bringing the constables there, I beg leave to differ from my friends in particular; I say alderman Geyer was perfectly justifiable in what he did. Mr. Geyer was at the meeting of the vestry, where Dreer stated, that they were fortunate in escaping with their lives; and he made the observation, that their names ought to be communicated, who would resort to violence. He had then, reasonable ground for supposing violence would be committed, and was therefore justified in sending constables there to preserve the peace. If they have acted contrary to the duties of their office, let complaint be made to the magistrate and they will certainly be indicted; but there was nothing of the kind. We have evidence however, of misconduct on their part towards Mills, who tells you, that he and another were sitting on the window seat and a pane of glass was accidentally broken; immediately a storm is impending; he is spoken to by a person in German; and was told, he was abusing him. In consequence of this information he told the man to speak to him in English, and he would answer him. Could there be any thing more reasonable? The constable was right in what he did; he gave no more provocation than this, and being charged for breaking a pane of glass which was perfectly accidental, and for this the peace officer was knocked down, and only saved himself from falling to the ground by catching at the desk, which was near. These are irregularities only, but what shall we say of the distribution of money, by Mannhardt; the sum, to be sure, was small but the circumstance is a feature in this business, of no small magnitude. What will be the consequence, if it come to this, that not only liquor, but money shall be given to voters? I know they endeavor to say, that it was only one of eight dollars to a man whose sleigh was hired for the day; but we will turn to our notes. In the first place, I will beg to have it ascertained, whether it was one or two dollars, whether it was the same or a different person to whom we allude, I think they were different persons. I understand that the dollar given by Mannhardt, was given professedly as a reward for electioneering services; the money given to the sleigh driver, was given as part payment for his services. I find no fault with it; we will take it, that dollar was a part of eight to which he was entitled; but the one respected the deficiency of provision, and the other was for liquor. How far it was consistent to give the sleigh driver, a dollar for purchasing liquor, as a present; the payment of which he could enforce; I am at a loss to imagine. However, it appears to me, that the first dollar was given for electioneering purposes, and then I have something to say respecting the desire expressed by

Mannhardt, that the man should be there at eight o'clock. George Kline says respecting this, "Mr. Mannhardt asked a person that came in, to partake of wine; he presented beer, it was a glass tumbler. I went to Cherry-street, and gave in my vote. I returned and saw Mr. Mannhardt give another person a dollar to go and spend, and told him he would wish him to go and bring in as many German tickets as he could. I did not hear any thing about ammunition. He told him he had been hard at work that afternoon, and he thought he ought to allow him something for his trouble." Kugler, the sleigh driver, says, "I went to the school house, and they had no beer, and Mr. Mannhardt gave me a dollar; says he, go get something to drink." I think then, gentlemen, I am supported in my idea of the manner in which the testimony was given; one of the dollars was presented for electioneering purposes, and the other as part of pay for sleigh hire. I refer it to you gentlemen, to say, what is the meaning of his giving that injunction to the man to be there at eight o'clock. What am I to understand by his saying it was the timid time? It is to me a mystery, I cannot explain it. I think, gentlemen, I have in as few words as possible, proved that money was given by Mannhardt, for electioneering purposes. I say again, I have no hostility towards Mr. Mannhardt, he is to me a perfect stranger; and I will not say one word about him, but as respects this transaction, in which he has violated the law, and therefore ought to be punished.

I proceed to shew, that the liquor thus improperly provided by the committee of vigilance, had the effect which will be the consequence always, of such a proceeding; that there was an unusual number of drunkards upon this occasion. I refer to the testimony of alderman Geyer, who states, that he never saw so many drunk upon the election day. I do not say how much liquor was there; two barrels, however, were certainly there; and there was a third barrel which must have had beer in it, but was then empty. I presume, that barrel was not carried there empty. There was also some wine, for which Bealer was complimented, because he had not made a charge of it. He was a retail grocer, and how such presents may effect the sale of their articles, you can determine better than I can perhaps. But it was *bribery* in plain unvarnished language; it is plain, that wherever, if a party wants to carry a certain ticket, he gives money for electioneering purposes, it is unquestionably bribery, as the law so denominates it, it gives no milder name. There was a scene of drunkenness and disorder. I refer to support my assertion to what was said by alderman Geyer, a man of observation, respectability and able to give what he said with perfect clearness and accuracy. He says, "in the evening I dispersed several mobs and never saw so much riot, or so much drunkenness." Now then, before we proceed to particular facts of riot, what are we to expect, if men go to elections in the temper of mind Houser has described, and there is also liquor to excite their spirits, already in a state of fermentation; and we do not see, that these men did not take liquor at their meals as usual,

Hepple said, he had his dinner and beer too; it was therefore additional to what they were in the habit of taking at their meals, which among hard working people is not a little; I say, what are we to expect from such proceeding? Exactly what took place; riots and drunkenness. But here I am to meet an assertion of Mr. Rawle; he says, we can make it out only as to two, Branardt and Core, and to constitute a riot, there should be three. It is true, so far, as his Honor will tell you, if he think it necessary to notice it at all, that, a riot undoubtedly must have three persons as actors in it; but it is by no means a rule, that I must know who are the three. If I know I can prove there was a riot, and can discover only one who was concerned in it, and can prove that he committed it with others, he alone may be convicted of a riot, provided, that the jury are satisfied, that he committed it in combination with the others although they be unknown. If these two persons committed a riot with any other person, it is enough to found a conviction, although the name of the other does not appear. Is it not in evidence, that there were engaged in the riots occasionally a dozen; and I do not know, that I go beyond the evidence, when I say, upon one occasion, there were one hundred and fifty or two hundred engaged. I believe the witness spoke of a dozen. But, gentlemen, we find that this testimony is not confined to a particular person; it was mentioned in addition to Geyer, by Busch; but his credibility has been attacked. Why? We are told he attributed certain expressions to the Germans which originated with himself. Let us examine, if it be so. It is not Busch only; but Mechlin also certainly says, expressly, that the words were, "there is Mannhardt *our* captain." Now I presume, the prejudices of our learned friend, will not be so far extended, that they will say, that Busch would have called him his captain, as if he belonged to his party. My inference is, that the Germans had called it out and Busch had repeated it, changing the expression, saying, "there is *the* captain," instead of "there is *our* captain." Mechlin says, the expression he heard was the same, Busch mentioned; therefore, the first cry was from the Germans and they called him "our captain;" and Busch hearing it, iterated it, changing the tense and number. Mechlin's testimony is this. "I was present when several voices said, 'let us go for our *Hauptmann* or headman.' I was standing in conversation with Mahany—they went out, and soon returned, crying out, 'make place, Mr. Mannhardt is coming,' and some voice said, 'the Saviour is coming.' He came up like a sergeant's guard, Bealer was at the head, Mannhardt followed, and Charles Lex in the rear of him, and they were marking time like soldiers." Now, if we connect what he says, with what Geyer said, there is every reason to believe, that these were the same, or at any rate as many of them as could get in, whom Geyer met, and whom Mechlin speaks of. Geyer met them staggering towards the school house; and referring to the same period of day, Mechlin says, he saw them entering in the same order, in which Geyer had said, he saw them out of doors. If this is not

a riot, what is it? The constables are blamed, and we are told they were the cause of the riots, this had no connexion with them. Let me make one observation; we are told, they had no warrants. Why, gentlemen, does a peace officer need a warrant to preserve the peace; and is a breach of the peace to be committed in his view, and can he not notice it without a warrant? Gentlemen, on the contrary, if a constable see a breach of the peace, and does not interpose, I will indict him; he must prevent it, and if in doing it, he is guilty of irregularity, he is amenable to the laws, and must be punished. And if a constable has a man in custody, and use no more force than is requisite to keep him; is there reason for any interference of a bye-stander? No. The law only must decide whether he has taken him properly, and used him correctly, and the law only can take him out of your hands. It will never do to interfere with the civil authority; but if the constable treat a man improperly, let him go to the law, and depend upon it, when it comes before a jury of our fellow citizens, if they see, that he has been guilty of an abuse of his power, and of more violence than was necessary to secure his prisoner, rely upon it, whether the proceeding be by civil action for damages or by indictment, he will never get out of their hands unpunished. I therefore say, it is an offence, and a very high one for the citizen to undertake to rescue the man from the constable; they had no right to do it whatever. And even if the constable did abuse him; if he did without it being necessary, take his mace from his pocket and strike Speiss under the eye; let Speiss bring forward his complaint, and he will have justice done him. The case was, the constable had seized the man, and charged him with being guilty of a breach of the peace, and whether he treated him well or ill, was to be submitted to the constituted authorities only. What was done? I refer to the testimonies of Repberger and Geyer, according to which, there was a mob which alarmed the whole neighborhood; the people came to their doors to see what was the matter. Mr. Geyer dispersed them over and over again, and at last Speiss prevailed over the peace officers, the populace took care to decide against them, and rescued the voters from their hands.

Gentlemen, our object is not vengeance, nor have we any authority to these particular defendants; it is the principle we want supported. The constitution preserves all elections, and is it possible that all our representatives who framed the Constitution of Pennsylvania, could have misunderstood this valuable privilege? It says, "all elections shall be free and equal." Now what says Uhler respecting the freedom of this election; he was asked, "why did you not interpose," "why" says he, "it was as much as my life was worth," and he did not interpose, nor did he dare to do it. If elections are conducted by riot, it is impossible to trace minutely every circumstance of disorder. Now gentlemen, you have the opportunity to give an example which will be instructing to the community at large, one way or the other. If it is right, when men have in view a particular object, to say, "we will effect it by

force;" and if you have a right to say, or if you wait until you can say, you knew they were doing wrong, but they did not *intend* wrong, you can never put a stop to such proceedings. Look to Europe, what do you see there? Do you not see instances, where the Catholics have been oppressing to blood and death, the Protestants? When these people are arraigned, will you be able to prove they meant to do wrong? Many of them really think, as St. Paul himself did, when they are committing the most abominable outrages, they are doing God service; but when brought into courts of justice, the law must say, whether what they did, was right or wrong. If these people have a right to proceed in this manner, so may we for political purposes; and a number of us may combine and say, "here is a Virginia candidate, whom they wish to elect to the presidential chair, but we will prevent it with our bodies and lives." If gentlemen, men were to join from motives of that kind, I would consider it my duty, to proceed instantly against any thing of the sort, with all the energies of the law. It is the part of juries to say, and the constitution says expressly, that the trials by juries shall be inviolate, it will depend upon them, whether combinations of this kind shall or shall not be suffered.

With regard to the number of courts in this indictment, the object is to be fully prepared, that the prosecution may not be rendered nugatory by the want of allegation. With respect to that of riot distinct from the other, it may have been supposed, that the prosecution could not establish the charge of combination; but it has been proved that there was a confederacy and that some of the defendants were actually perpetrators of a riot, and had pledged themselves by body and life to carry their object into effect, therefore, the act of one must be considered as the act of all. When the court apportions the guilt they may say, one man has been more guilty than another, and will fine him in degree to his offence: but with the jury it makes no difference, they only can decide upon the question of guilt or innocence. The principle of law has not been controverted, as laid down by Mr. Binney; we are agreed in the principles of law; that when there was an unlawful agreement to carry into effect by force, where the object is lawful, but the means unlawful, it is what the law denominates a conspiracy, and a jury must find accordingly. It is foreign to your enquiry whether English preaching ought or ought not to be introduced. If it appears, that the defendants did agree that they would oppose by force the introduction of the English preaching, I take it for granted, that the verdict ought to be against them; it is a conspiracy. This is the principle laid down in the shoemakers case, and in different cases in the several parts of the United States, in New England, and other decisions. If the parties were not content with the election of the congregation, they had an appeal to the law; for there is no difficulty in this respect, if the election had been irregular, the way was perfectly open for them, they had a right to call upon Mr. Rawle, and Mr. Levy, to

whom they applied to defend them, and say, "apply to the court for an information in the nature of a *quo warranto*;" and the court would have the power to say, whether under their charter, the congregation could decide the point in dispute respecting the use of the German or English language, and if they had been deprived of their elective franchise, the court would restore it.

Allow me, in conclusion, seriously to appeal to you, what cause was there for this kind of hostile infuriated spirit? For I do say, that all history, sacred and profane, and personal experience teach us, that the most infuriated spirit that can agitate the breast of man, is mistaken zeal, a zeal, as in the language of holy writ, without knowledge. I presume, you as well as I, sometimes read "Young's night thoughts;" do you not recollect that when his daughter had died in France, and she was not permitted to be buried in consecrated ground, under the idea that she was a heretic, it occasioned that line, "the sainted spirit petrified the human breast." The French people were a kind, obliging people, but their bigotry rendered them inaccessible to the demands of pity and humanity. Therefore without impeaching those who wished to exclude English preaching, I do say, that it is most dangerous to suffer these proceedings to take their course unchecked, and it is necessary that an example should be set to the community, that to carry points in religion, they must not undertake to resort to force, and that, of course, they must acquiesce in the result of their elections, or appeal to the laws of their country. Bigotry has not one feature of this sentiment; the mildness of christianity is assuredly its contrast; and in this country I am happy to observe, that though our people upon necessary occasions meet death with great coolness, and intrepidity; in time of peace they are loth in spilling blood; they do not habitually talk of spilling blood; it is not a threat congenial to their tempers. They may occasionally quarrel as all men who have strong passions will; they may proceed to blows, but the idea of taking blood, because others differ from us in opinion, which has been repeated too often on this occasion, and hereafter, I hope never again will be, has never entered in their imaginations. I have not taken the whole ground that I contemplated in the outset, but I will here meet the case under his Honor's direction.

YEATES, JUDGE,

After making his acknowledgments for their patient attention, and stating the charges of the indictment, thus charged the Jury:

ARE the defendants, all or any, guilty of the conspiracy charged? A sense of religion is essentially necessary in all civilized governments. The hopes and fears of an *hereafter* are strong incentives to a virtuous course of life, and the most powerful restraints of vicious propensities. Without a firm belief in a future state of rewards and punishments, an oath or affirmation loses its most efficient sanction. In this happy country, the rights of conscience are inviolable and sacred. Every man is at liberty to worship the Creator of the Universe in his own way. The jury, therefore, will constantly keep in mind, that it is no part of their duty to decide either on the doctrines or discipline of the German Lutheran church, or whether the occasional use of the English language in the adoration of the Deity would conduce to the true interests of the church in general, and of the youthful part of it in particular. For we freely disclaim all jurisdiction on these points. But we are called upon in our several departments to consider and impartially to decide, whether the laws of the country have been violated by all or any of these defendants. In every association of individuals, whether civil or religious, the voice of the majority fairly and honestly taken, according to their fundamental rules ought to prevail, where there is a difference of opinion amongst the members:—still, the minority have a right to meet and consult together and use all lawful means to effectuate their honest purposes, in cases not prohibited by law: and the using unlawful methods with intent to defeat them of their first rights, is an offence known to our code.

The Lutherans are a respectable religious society in this state, they borrow their name and adopt the religious tenets of Martin Luther, one of the champions of the reformation, grounded on the celebrated Augsburg confession of faith. They were incorporated in this city by a proprietary charter on the twenty-fifth September 1765, which referred to their fundamental articles and was, on the third March 1780 confirmed and amended at their instance by an act of assembly. The Lutheran system having first taken root in Germany, it was highly natural and reasonable, that the emigrants from that country, and their immediate descendants, who professed that faith should use the language of that empire, which they understood, in their public worship: they would feel a predilection for it as the language of their forefathers. But experience teaches us, that after an efflux of time, their children would not feel the same attachment to it—with them it would not be their native tongue; hence arose unhappy divisions which rent the church, and which I deeply regret. The address of 1805 declares by a committee, that “they wish and seek no separation, they ask for the introduction of part of the instruction of the youth and of the

divine service in the English language for the benefit of the congregation, and that in such a manner, that not the smallest offence be given to them who had opposed them theretofore." Such also is the devout representation of Doct. Leib, the chairman of the committee, to the president of the corporation on the twenty-sixth September, 1815.

It has been said by some of the members, that "an English mode of worship cannot be introduced or permitted in their churches," upon the ground that they were a *German* Lutheran congregation and incorporated as such. To this I cannot accede. Imperious duty obliges me to declare my mind in this particular, explicitly. I consider the word "*German*" in the different instruments as mere matter of description. The principle was established by all the judges of this court in the case of the German religious society of Roman Catholics of the Holy Trinity church in the city of Philadelphia (in Spruce street.) No religious tenet of the Lutheran congregation has been shewn, confirming the divine service of that church to the German language. No law contains such direction. To *Omniscience* all languages are known as well as the inward recesses of the human heart. The aspirations of a devout mind will not be overlooked by the Father of mercies. But the church itself has practically determined the very point. On the laying of the first corner stone of Zion church on the sixteenth of May 1766, Doct. Wrangie delivered a sermon in the English tongue:—Although the congregation did not deem it eligible to introduce an alternate preaching in the German and English languages, yet on the twenty-fifth February 1806, at a meeting of the ministers, vestrymen and church-wardens, in order "to connect the congregation together in love, doctrine and faith," they solemnly agreed to cede and convey unto those who wished to have divine service in the English language, the church of St. Michael and the first burial ground, upon certain terms expressed in their resolution. No one can suppose that the church councils would have come into such a measure, if they had doubted for a moment on the orthodoxy of worshipping the Supreme Being in the English tongue. As a matter of history, I can vouch, that the Lutheran church in the Borough of Lancaster was consecrated fifty years ago by devotional exercises in the German and English languages. I was present at the time, and never heard more striking bursts of true eloquence, which went home to the heart, than those which issued from the lips of Mr. Whittfield, in the afternoon of that day. On this subject I may add, with propriety, that divine worship is now performed in Lancaster every fortnight regularly in the English tongue, and a discourse also delivered by the worthy gentleman who performs the ministerial duties of the Lutheran church.

I have been more full on this part of the subject, because I do not yet despair of the return of peace and harmony into the churches of St. Michael and Zion, if mutual forbearance and brotherly love are cultivated amongst its members. If there are any who oppose the English worship on conscientious scruples *alone*, I

recommend to them to consult their bibles, confessions of faith and catechisms, and calmly and deliberately determine for themselves, whether their scruples will bear the fair test of reason. Yet let me not be misunderstood, when I assert as my *private opinion*, that devotion in the language of the country, is perfectly orthodox according to the tenets of Martin Luther—I explicitly declare, that the councils of that church are the *exclusive* judges whether any other than the German language shall be used in public prayer or discourses, and alone can regulate their own discipline according to their sober discretion and prudence.

With these preliminary observations I proceed to the discharge of my immediate official duties. The question to be tried is, are the defendants or any of them guilty of the offence stated in either of the counts in this indictment? The law has been accurately laid down by the prosecutors.

All confederacies and combinations whatsoever wrongfully to prejudice a third person, are highly criminal at common law. (2. Leach's Hawk. 121. Hawk. lib. 1. c. 72, sect. 2. An indictment lies wherever either the conspiracy is entered into for a corrupt or illegal purpose or for the use of unlawful means to effect a legal purpose, although such purpose be not effected. (East cr. law. 462.) The fact of conspiring need not be proved on the trial, but may be collected by the jury from collateral circumstances. 1. Bla. rep. 392. 1. Str. 144. So, if the parties concur in doing the act, although they were not previously acquainted with each other. (2. Hawk. by Leach 122.)

It is contended on the part of the prosecution, that the conspiracy here charged, may fairly be inferred from the acts of the defendants, and from their expressions as well written as oral, and that neither of them can rationally be accounted for on any other grounds—as to their acts and doings we are referred to the transactions of the different school houses belonging to the churches, before and on the day of the election. On this part of the case, the evidence is very contradictory, and I fear cannot be reconciled. It is therefore the duty of the jury to consider with due deliberation and calmness the whole of the testimony, and assign to each witness the credit to which in their consciences and judgments they shall think him justly entitled. They will as far as possible, reconcile discordant testimony, but when this cannot be done, they will weigh the credit of each witness according to his reputation and station in the world, and the probability of his story. Many witnesses came before you under a certain degree of bias, as their opinions are made up either favorably or unfavorably to the introduction of divine worship in English into the churches. Jurors are the exclusive constitutional judges of the credibility of witnesses, and should perform this important branch of their duty with firmness and impartiality. They will make every due allowance for human passions and infirmity; they will not believe rashly and without reasons satisfactory to their own minds, that any witness has intentionally committed the horrid crime of perjury. They

will call to their aid the manner in which the different witnesses have related their stories, and consider on the one hand, their candor and ingeniousness, and on the other hand, whether they have shewn backwardness and prevarication on their oaths. The good sense of the jury will, I trust, fill up this general outline of instructions—I shall, on the part of the prosecution refer them to the testimony of Andrew Busch, John A. Uhler, George Witman, Charles Eberle, John Geyer, Esq. William Wagner, George Kreps, Henry Burkhardt, George Kline, Godfrey G. Cope, John Long, Conrad Ripberger, Jacob Mechlin and George Rehn, who have been severally examined; and on the part of the defendants to Frederick Dreer, George Honey, Henry Link, Christian L. Brandt, Henry Lutheridge, John Adam Herpel, Tobias Beeler, Frederick Eberthier, George Millar, Joseph Speiss, Jacob Riley, Henry Lehr, Henry Steed, John Kugler and Henry Heyd.

These witnesses have detailed the different facts according to the impressions made on their minds respectively. It cannot be expected, that I shall go through the testimony minutely which has cost us eight days in hearing, and which has been so fully commented on by the different counsel. The jury have heard those remarks and will patiently consider them, and give them such weight as upon a fair contrast of all the evidence collected together, they shall think them entitled to. But I feel it to be my duty to be more particular as to some of the witnesses. Andrew Busch, certainly, in a very improper manner, styled Christian Mannhardt the "Lord God of the Germans," as well as their "captain general." It remained doubtful in the evidence given for the state, who made use of these expressions, but it is fully ascertained by Frederick Dreer, John Adam Herpel, Jacob Reily and Charles Keileck, that they must be attributed to Busch. John Piper the stripling of nineteen, paid little attention to his sacramental vow, when in conversation with Godfrey G. Cope on the day of the election, he connected together the holy Eucharist and an impious oath. It detracts also from the credibility of Frederick Dreer, that he has declared on oath, that he had no conversation with Adam G. Harris, wherein he had said, that the English party might deem themselves fortunate in having escaped unhurt from the school house, or used any expressions to that effect. The direct contrary has been asserted by Harris and John Birnbaum upon their oaths, with all the peculiar circumstances attending it, and the observations of Mr. Geyer thereon, that the president should be informed of it. Let the jury judge, whether I have not ground for these remarks.

I have been pressed by the counsel for my opinion of the validity of a supposed ordinance of the corporation of the 21st of December 1805, authorising the president to appoint the inspectors and clerks of the election. If it be good, our books say, that it will bind persons within its jurisdiction equally with a statute. 12 mod. 698. I trust that I shall never shrink from the discharge of any part of my official duty; but independently of the impropriety of deciding a question of so much moment to the members

of the Lutheran church in this collateral mode, unless there was an absolute necessity for it, for the attainment of justice; there are existing circumstances which impel me to decline giving an opinion on that point. The very question is now depending at issue on a motion for an information in the nature of a *quo warranto*, which will probably come on to be tried at the next *nisi prius* court, when each party will come prepared to try the validity of the ordinance. My opinion therefore ought not to be forestalled; without absolutely committing myself. I feel no difficulty in asserting that considerable doubts attend this bye-law. The proprietary charter, and the act of third of March, 1780, are wholly silent as to the mode in which the inspectors of the election shall be elected or appointed. The seventh, eighth, ninth, and tenth sections of the laws, make provision for the election of vestrymen and church wardens, &c. and place the power in the members of the congregation, qualified to vote. The eleventh section enumerates the powers of the corporation and amongst others, declares that they may choose a treasurer, "and a majority of two third parts in number of those met and convened upon due notice given (which two thirds shall be a quorum) from time to time, are authorized and empowered to make bye-laws, rules and ordinances, and to do every thing needful for the support and government of the congregation." The difficulty is increased from the manner in which the bye-law is entered in the book of record of the corporation. It does not appear thereby, that due notice was given, or that a majority of two third parts concurred in enacting it.

It has been urged by the defendants, that the riot and tumult, on the day of the election, arose from the unauthorized motion of George Witman, and that he alone was responsible for the consequences. But if there was a riot and breach of the peace on that day, whose source may be fairly traced to the unlawful combination forcibly to oppose the introduction of any other language besides German into the services of the church, the conduct of Witman will not excuse the defendants. Besides, if he really was ignorant of the appointment of inspectors by the president of the corporation, he could not be subject to blame, in proposing the question to the electors assembled; he shewed the opinion of learned counsel in favor of the rights of the congregation. The resolutions of two hundred and sixty-three members of the congregation at the two school houses on the sixth and ninth of October, 1815, and entered in the minutes of the corporation on the eleventh of October following, contained the most intemperate language. It denounced in strong and highly reprehensible terms, every member of the corporation who was friendly to English preaching, as traitors to their trust and unworthy of their confidence. If these remarks were well founded, it would be difficult to say, from what source the president would be vested with legitimate authority to discharge his official functions in the appointment of inspectors.

Upon this part of the case I will content myself with submitting

to the jury, whether viewing the conduct of Witman in the strongest and most unfavorable light, it would possibly justify the acts and doings of those who have been styled the German party.

I come next to the writings and sayings of the defendants, which are urged as further overt acts from which the unlawful agreement may be collected. The German petition, which was on the twenty-sixth September 1813, addressed to the corporation with one hundred and ninety-five signatures, forms a highly important part of the evidence, and merits great consideration. The Lutheran hymn book, several German dictionaries and three learned gentlemen, (two of them Reverend clergymen) have been brought forward to aid us in our translation. The passages supposed to be exceptionable on the part of the state are thus rendered into English by John Goodman, Esq. and verified by his oath.

“We have firmly bound ourselves before God and solemnly to each other, to defend *with our bodies and lives* our German divine worship against every *attack*, and to oppose with all *our power* the introduction of a strange language into our churches;” and again, “we further pray you to make such an arrangement, that the opponents of the German language and German divine worship may never be permitted to meet in our school houses for the attainment of their base views;” and again, “be ye assured, that we will *with all our powers, yea, with body and life*, support you dear fathers and brothers, in all such measures as may tend to the welfare, the advancement and to the perfecting of our German divine service.” That this is the plain, literal translation of the original, is denied by no one. The dictionaries shew, that “*mit Leib und Leben*,” in the German tongue, signify in English, “with body and life.” But it is said, by Francis Varrin, Dr. Helmuth and Dr. Colin, that according to the idiom of the German language, the words mean nothing but great earnestness in a cause supposed to be good—that they convey no threat, nor imply any thing unlawful or criminal—and that they do not pledge the signers to any improper or illegal enterprize. They said, that the word “*mit*” or “with” refers to the writers or speakers, and is contradistinguished from the term, “by.” I pay great difference and respect to the opinions of these learned men, in a language they must be supposed to understand; and I am disposed to acquiesce in their sentiments, that these words in a figurative or metaphorical sense may fairly convey the idea they have assigned to them. But in this paper, the verbs, *defend*, *oppose* and *attack* are super-added, which imply activity and force, if the same become necessary by subsequent events. It is moreover perfectly clear to every one, that we may derive most important lights in our researches from the previous as well as subsequent conduct of the defendants and their associates, who form what is often called the German party. By analogy we may adopt the expressions of pious and Reverend divines and call such conduct the *context*. Words may be innocent or indifferent in themselves standing alone, which may be susceptible of a very

different construction, when compared with other expressions, as acts of the speaker. So, of a shake of the head, or shrug of the shoulders without the utterance of a single expression. Let the papers then be examined with these cautionary remarks. Charles Eberle proves, that it is the hand writing of Christian Mannhardt, who is said to be a man of warm and ardent temper. From the pen of such a man, we cannot reasonably expect a mere milk and water composition, breathing such language as a mother would use to a child. Alderman Geyer proves, that the words, "*mit Leib und Leben*" were underscored in the original address, when it was presented to the corporation. They were therefore deemed to be energetic terms to which the attention of the readers was particularly solicited. The bulk of the signers were plain men unused to figures of speech, who would adopt the expressions in their literal and natural sense. Mannhardt was the leader of those who were attached to the performance of divine service in the German language *exclusively*, and delivered orations against their adversaries. He boasted, that he had stirred up all the people at Camptown by a speech he had addressed to them, that he had it in his power and would do it again. To John Uhler, he says, "not half an inch must be given, or blood must flow." To Charles Eberle he repeats expressions of a similar nature. John Derneck, tells Andrew Busch, "before the English language shall be introduced into the church, blood shall flow," and uses the same words again to Henry Burkhardt, adding, that they would do as had been theretofore practised in the German church in London, have rum and beer in the church and fight like game cocks, or bull dogs. Christian Schmidt also threatened George Krips, that if his companions would not come in peaceably, they would follow the command of our Saviour and smite with the sword. I forbear to repeat the expressions of Valentine Haglee, John Schlag, Schwartz, Kean and others, whose conduct and sayings are admitted to have been highly intemperate and blameable. The German petition was prepared and signed with several names prior to the petition in favor of English preaching. They state therein, that they had firmly bound themselves before God and solemnly to each other to *defend* with their *bodies and lives* their German divine worship against every *attack*, which general word includes a lawful as well as unlawful attack and to oppose, &c.—

To the jury it belongs to determine, whether they consistently with good conscience can say on their oaths, that force or violence was not intended to be used, if they should see a fit occasion for it, taking into view the facts preceding it, and all the attendant circumstances. It is of no avail, in what manner the original petition was obtained, or that the defendants were ignorant of the extent of the legal offence they had committed. Every man is bound to know the laws of his country. The fact of conspiring need not be proved, but may be inferred from circumstances. Establish the concurrence of the parties to do the act, it is a conspiracy, although no act be done, and even though they were not previously

acquainted with each other. When an act is done by one, the law imputes it to all, if done in pursuance of the illegal combination. This I explicitly lay down to be the laws by which the jury should be governed. Neither they, nor I, have any thing to do with the consequences of a correction: the constitution of our country has placed this power in other hands. Between fifteen and twenty of these defendants have courted this prosecution, as has been proved by the clerk of the mayor. Be it so; they have chosen and spread their own bed, and must abide the consequences. In our several departments we act under the sanction of an oath, and are bound by the most imperious duty to do equal justice to the commonwealth and the defendants. Let each of us then go straight forward, looking neither to the right nor the left. Let each of us endeavor to inform our judgments and act impartially according to the dictates of a pure conscience. I will only add, if the jurors on mature deliberation shall have any reasonable doubts of the guilt of the defendants, or any of them, it is their duty to acquit them; if they have no such doubts, they are bound to convict. To convict the innocent or acquit the guilty, both equally are abominations to the Lord.

To the calm and temperate decision of the jury, I cheerfully commit the cause.———VERDICT, GUILTY!

APPENDIX.

TO THE

HONORABLE CORPORATION OF

ST. MICHAEL'S AND ZION'S

CONGREGATION, IN AND NEAR PHILADELPHIA.

WE, the undersigned, members of the German Evangelical Lutheran Congregation, in and near Philadelphia, herewith give an honorable corporation to know, our liveliest displeasure on the inconsiderate undertaking of introducing a strange language in our churches.

At a time when our beloved congregation tasted the deepest rest, when the *worthy German Gospel* was preached among us with peculiar energy and power, when not only an increase of the number of our congregational members, but a powerful spiritual awakening, particularly among our youth, appeared to manifest itself—exactly at that time it is ventured on, to sow the seeds of discord, of disturbance and destruction.

We declare ourselves briefly by this opportunity, and only aver, to an honorable corporation, (that we are determined, as we have also firmly bound ourselves before God, and solemnly to each other) to defend with our bodies and lives, our German divine worship against every attack, and to oppose with all our power, the introduction of a *strange* language in our churches.

To this end we herewith apply to an honorable corporation, and to you fathers and brothers particularly, who in this respect cherish similar feelings with ourselves, who with us prefer divine service in German to the English, and pray you, assiduously, in virtue of your oaths before God and our whole congregation, to guard *our exclusive* privileges, and the welfare of our whole union, so that the tempter may not succeed in destroying our beautiful German establishment.

We pray you, dear fathers and brothers, to direct a steady eye to the charter of our church, according to which, in important occurrences, at least two-thirds of the corporation and the congregation are required, before any innovation can be brought about.

We pray you, dear fathers and brothers, agreeably to a resolution of the corporation, not again to let it be brought to an election, whether the English divine service shall be introduced in our German churches or not.

We pray you, dear fathers and brothers, for the suppression of a pernicious example, by repealing a resolution, which permits the members of the corporation to speak in a strange language, when the honorable church council is assembled on business of the congregation: such an example hath in our view, the most baneful consequences.

We further pray you, to make such arrangements that the opponents to the German language, and German divine worship, may never be permitted to meet in our school houses, for the attainment of their base views, because, we ourselves, would thereby give them the means in hand for our destruction.

We pray you, dear fathers and brothers, for the sake of the ashes of our ancestors, who gave their wealth, yea, their blood, to build us German churches, thereby, to enable us to enjoy the blessings of the *German Gospel*; we pray

you, for the sake of the peace of our congregation ; for the sake of the innocent hearts, who under present circumstances suffer the deepest sorrow. We pray you for the sake of the German Lutheran order ; yea, we pray you for the sake of Jesus Christ our Saviour, to comply with our prayers. And, finally be assured that we will *with all our powers—yea, with body and life*, support you, dear fathers and brothers, in all such measures, that may tend to the welfare, the advancement, and to the perfecting of our German divine service.

Experience teaches us, that if we give up the breadth of a finger of our property, of *our exclusive* rights and privileges, that we are then near our destruction, in that event, we shall become the object of laughter of every civilized nation.

We are with esteem and devotion, an honorable church councils,
Sincere Brothers.

***** The above is a true translation from the original hereto annexed. Witness my hand and seal, January 12th, 1816.

(Signed) JOHN GOODMAN, Notary Public,
residing in the Northern Liberties, County of Philadelphia.

Frederick Eberle	John Seyfert	his
John Godfrey Finn	his	John X Yerger
Frederick Buchhalter	John X Kundje	mark
Frederick G. Rothhand	mark	Philip Gágel
Jacob Schmidt	Matthias Sheuerman	Jacob Hemm
George D. Henk	Frederick Braun	Henry Schröder
[Unintelligible]	George Allmendinger	William Jäger
Christoph Beisch	Frederick A. Gildner	Christian L. Mannhardt
his	his	William Kreuss
Bernhard X Weber	Adam X Silbert	—— Lessner
mark.	mark	Jacob Knöss
Matthias Pleiss	Theobald Schmidt	Martin Folbraut
John Philip Krœcker	George Weinman	Jacob Link
Charles Gunther	his	Henry Luederiz
Henry Jahraus	William X Weinman	John Dankworth
Tobias Buhler	mark	his
Philip Schmidt	John Schultz	Michael X Schlag
his	[an erasure]	mark
Joseph X Spiess	his	his
mark	Philip X Zehner	Conrad Schäfer
Philip Eberle	mark	mark
Melchior Wahl	George Miller	Henry Bitting
Martin Scheible	John Zehner	Christian Rœsch
Daniel Bremer	John Graff	his
his	[Unintelligible]	Abraham X Eiker
Frederick X Emerig	his	mark
mark	John X Gottschalk	Christoph Fritz
his	mark	John B. Schlag
Frederick X B. Bremiker	Frederick D. Wilkins	John Schlag
mark	Michael Miller	John Lutgen
Ludwig Beck	John Pohl	[Unintelligible]
George Fredk. Muller	Peter Schmidt	his
Philip Blum	his	Bernhardt X Schmidt
George Walter	John X Borry	mark
Jacobus Waltenrath	mark	John Gutfahr
L. Frederick Dizler	Joseph Yerger	his
George Selbert	Philip F. Simon	Jacob X Krobb
his	George Miller	mark
George X Beyer	Christopher Lindenmuth	Charles Mœcbus
mark	Conrad Weckerle	John Hanschell

Peter Selbert
 George Treichel
 Henry Fubben
 John Herpel
 John Rehn
 Adam Risinger
 Henry Schlag
 F. Dohnert
 Christian Brand
 Jacob Unkel
 Christian F. Cruse
 Jacob Chur, jun.
 Tobias Riley
 [Unintelligible]
 George H. Mœhle
 Frederick Oberthuer
 Jacob Riley
 his
 Jacob ✕ Peusch
 mark
 Conrad Weyl
 John D. Stiltz
 Gottlob Schwartz
 [Unintelligible]
 F. A. Schneider
 Peter Diehl
 Jacob Diehl
 John Chur
 Philip Hamman
 Henry A. Maxheimer
 Charles Bartholoma
 Henry Miller
 George Rechel
 Michael Haag
 John Oestereicher
 August Hildebrandt
 John Meilre
 Abraham Henrig
 Frederick Hæckley
 Frederick Fricke

David Schuh
 Henry Koch
 John Dorneck
 his
 Michael ✕ Knorr
 mark
 Charles Smith
 George Smith
 George Brickman
 John W. Berg
 Charles Lex
 John Botner
 Jacob Allmendinger, jun.
 William Spiess
 T. A. Seeman
 John Beutel
 Frederick Brown
 [Unintelligible]
 Valentine Flegler
 Henry Flegler
 Charles Dominique
 Frederick Schiwikkard
 Christian Jahns
 Jacob Endress
 Elias Fruze
 Henry Yolle
 Martin Folbrecht
 John Seifert, jun.
 W. Wilking
 Mathias Scheuerman
 David Scheuerman
 Jacob Scheuerman
 Elias Frey
 Christian Pueffer
 John Blæch
 Jacob Pueffer, jun.
 John Pueffer
 Henry Sweyer
 Jacob Ruhle
 Christian G. Schmidt

his
 Martin ✕ Diel, jun.
 mark
 his
 John ✕ Cruse
 mark
 Henry Maultring
 [Unintelligible]
 [ditto]
 Christian Kærner
 George Strœhle
 Caspar Pickell
 Henry Schwenk
 Jacob Miller
 Henry F. Heuer
 Godfrey Seeley
 John Borman
 Charles Hempel
 George ———
 Jacob Chur
 William Kramer
 John A. Maurer
 George Warttmann
 John Young
 Christian F. Koppel
 Henry C. Heil
 Eimer Bauman
 John G. Lauer
 John G. Dau
 Christian Loos
 John Adam Fuss
 Peter Link
 William Carrolson
 Daniel Michelbein
 Jacob Eberle
 John G. Yolle
 Charles Schwartz.
 A blindman

IN THE
MAYOR'S COURT
OF THE CITY OF PHILADELPHIA.

March Sessions, 1816, } s. s.
City of Philadelphia.

THE Grand Inquest of the commonwealth of Pennsylvania, enquiring for the city of Philadelphia, upon their oaths and affirmations respectively do present, that Frederick Eberle, Frederick Buchhalter, John P. Kræcker, Charles Gunther, Frederick Bennecker, Adam Risinger, John Seyfert, Matthias Sheuerman, Theobald Schmidt, George Wienman, Conrad Weckerle, David Schuh, John Dorneck, Michael Knorr, William Yager, Christian L. Mannhardt, Jacob Link, John Dankworth, Christian Reisch, John Schlag, John Cruse, Henry Dolinert, Christian F. Cruse, Jacob Chur, junr. Gottlieb Schwartz, F. A. Schneider, John Chur, Henry A. Maxheimer, Frederick Hœckley, Frederick Fricke, John William Berg, Charles Lex, Valentine Flegler, Henry Flegler, Frederick Schwikkart, Christian Jahns, Jacob Endress, John Seifert, Matthew Scheuerman, David Scheuerman, Jacob Scheuerman, Henry Schweyer, Caspar Pickles, John Bornman, Jacob Chur, Christian G. Schmidt, John George Dau, Jacob Eberle, John Schultz, William Weyman, John Peter, Henry Luben, Peter Selbert, Philip Zehner, Christopher Busch, Amos Burman, Henry Miller, Philip Eberle and John Herpel, on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifteen, were members of the German Evangelical Lutheran congregation, in and near Philadelphia. And so being severally and respectively members of the said congregation, they the said Frederick Eberle, Frederick Buchhalter, John P. Kræcker, Charles Gunther, Frederick Bennecker, Adam Risinger, John Seyfert, Matthias Sheuerman, Theobald Schmidt, George Wienman, Conrad Weckerle, David Schuh, John Dorneck, Michael Knorr, William Yager, Christian L. Mannhardt, Jacob Link, John Dankworth, Christian Reisch, John Schlag, John Cruse, Henry Dolinert, Christian F. Cruse, Jacob Chur, junr. Gottlieb Schwartz, F. A. Schneider, John Chur, Henry A. Maxheimer, Frederick Hœckley, Frederick Fricke, John William Berg, Charles Lex, Valentine Flegler, Henry Flegler, Frederick Schweickart, Christian Jahns, Jacob Endress, John Seyfert, Matthew Scheuerman, David Scheuerman, Jacob Scheuerman, Henry Schweyer, Caspar Pickles, John Bornman, Jacob Chur, Christian G. Schmidt, John George Dau, Jacob Eberle, John Schultz, William Weyman, John Peter, Henry Luben, Peter Selbert, Philip Zehner, Christopher Busch, Amos Burman, Henry Miller, Philip Eberle and John Herpel, unlawfully and wickedly combining, conspiring and confederating together to acquire for themselves unjust and illegal authority and power in the said congregation; and to distress, oppress and aggrieve the peaceful citizens of this commonwealth, also members of the said congregation, and to prevent them from the free, lawful and proper enjoyment of the rights and privileges thereof; afterwards to wit, on the day and year aforesaid, at the city of Philadelphia aforesaid, and within the jurisdiction of this court, unlawfully assembled and met together, and being so assembled and met together, did, then and there, unjustly and unlawfully, and oppressively, con-

aspire, combine, confederate and agree together to prevent, by force and arms, the use of the English language in the worship of Almighty God, among the said congregation, and for that purpose did, then and there determine, and firmly bind themselves before God, and solemnly to each other to defend with their bodies and lives, the German divine worship, and to oppose by every means, lawful and unlawful, the introduction of any other language, into the churches, and the said Frederick Eberle, Frederick Buchhalter, John P. Krœcker, Charles Gunther, Frederick Bennecker, Adam Risinger, John Seyfert, Matthias Scheuerman, Theobald Schmidt, George Wienman, Conrad Weckerle, David Schuh, John Dorneck, Michael Knorr, William Yager, Christian L. Mannhardt, Jacob Link, John Dankworth, Christian Reisch, John Schlag, John Cruse, Henry Dolinert, Christian F. Cruse, Jacob Chur, junr. Gottlieb Schwartz, F. A. Schneider, John Chur, Henry A. Maxheimer, Frederick Hœckley, Frederick Fricke, John William Berg, Charles Lex, Valentine Flegler, Henry Flegler, Frederick Schwikkart, Christian Jahns, Jacob Endress, John Seifert, Matthew Scheuerman, David Scheuerman, Jacob Scheuerman, Henry Schwyer, Caspar Pickles, John Bornman, Jacob Chur, Christian G. Schmidt, John George Dau, Jacob Eberle, John Schultz, William Weyman, John Peter, Henry Luben, Peter Selbert, Philip Zehner, Christopher Busch, Amos Burman, Henry Miller, Philip Eberle and John Herpel, and each of them, in pursuance of the said unlawful and oppressive conspiracy, combination, confederacy and agreement so formed, and made as aforesaid, afterwards to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and sixteen, at the city of Philadelphia, aforesaid, and within the jurisdiction of this court, at an election, then and there held by the members of the said congregation, for certain officers of the same, to wit, for elders and wardens, did unlawfully and oppressively, and with force and violence, riotously and routously, make and raise, and cause to be made and raised a great noise, tumult, riot, and disturbance, and then and there, in further pursuance of the said unlawful and oppressive conspiracy, combination, confederacy and agreement so formed and made as aforesaid, did assault, beat and wound certain members of the said congregation, to wit:—for the better carrying on the said unlawful and oppressive conspiracy, combination, confederacy and agreement into effect and execution, to the great damage, oppression and grievance of the members of the German Evangelical Lutheran Congregation, in and near Philadelphia, aforesaid, to the evil and pernicious example of all others in the like-case offending, and against the peace and dignity of the commonwealth of Pennsylvania.——And the grand inquest aforesaid, upon their oaths and affirmations aforesaid, do further present that the said Frederick Eberle, Frederick Buchhalter, John P. Krœcker, Charles Gunther, Frederick Bennecker, Adam Risinger, John Seyfert, Matthias Scheuerman, Theobald Schmidt, George Wienman, Conrad Weckerle, David Schuh, John Dorneck, Michael Knorr, William Yager, Christian L. Mannhardt, Jacob Link, John Dankworth, Christian Reisch, John Schlag, John Cruse, Henry Dolinert, Christian F. Cruse, Jacob Chur, junr. Gottlieb Schwartz, F. A. Schneider, John Chur, Henry A. Maxheimer, Frederick Hœckley, Frederick Fricke, John Berg, Charles Lex, Valentine Flegler, Henry Flegler, Frederick Schwikkart, Christian Jahns, Jacob Endress, John Seifert, Matthew Scheuerman, David Scheuerman, Jacob Scheuerman, Henry Schwyer, Caspar Pickles, John Bornman, Jacob Chur, Christian G. Schmidt, John George Dau, Jacob Eberle, John Schultz, William Weyman, John Peter, Henry Luben, Peter Selbert, Philip Zehner, Christopher Busch, Amos Burman, Henry Miller, Philip Eberle and John Herpel, on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifteen, were members of the German Evangelical Lutheran Congregation, in and near Philadelphia, and so being members of the said congregation, they, the said Frederick Eberle, Frederick Buchhalter, John P. Krœcker, Charles Gunther, Frederick Bennecker, Adam Risinger, John Seyfert, Matthias Scheuerman, Theobald Schmidt, George Wienman, Conrad Weckerle, David Schuh,

John Dorneck, Michael Knorr, William Yager, Christian L. Mannhardt, Jacob Link, John Dankworth, Christian Reisch, John Schlag, John Cruse, Henry Dolinert, Christian F. Cruse, Jacob Chur, junr. Gottlieb Schwartz, F. A. Schneider, John Chur, Henry A. Maxheimer, Frederick Hockley, Frederick Fricke, John William Berg, Charles Lex, Valentine Flegler, Henry Flegler, Frederick Schwikkart, Christian Jahns, Jacob Endress, John Seifert, Matthew Scheuerman, David Scheuerman, Jacob Scheuerman, Henry Schwyer, Caspar Pickles, John Bornman, Jacob Chur, Christian G. Schmidt, John George Dau, Jacob Eberle, John Schultz, William Weyman, John Peter, Henry Luben, Peter Selbert, Philip Zehner, Christopher Busch, Amos Burman, Henry Miller, Philip Eberle and John Herpel, unlawfully and wickedly combining, conspiring, and confederating together, to acquire for themselves, unjust and illegal authority and power in the said congregation, and to distress, oppress and aggrieve the peaceful citizens of this commonwealth, also members of the said congregation, and to prevent them from the free and lawful and proper enjoyment of their rights and privileges thereof, afterwards to wit: on the day and year last aforesaid, at the city of Philadelphia aforesaid, and within the jurisdiction of this court, unlawfully assembled and met together, and being so assembled and met together, to prevent by force and violence, the use of the English language, in the worship of Almighty God, among the said congregation, and for that purpose did, then and there, wickedly, unlawfully and oppressively, confederate and agree together and among themselves, and did then and there determine, and firmly bind themselves before God, and solemnly to each other, to defend with their bodies and lives, the German divine worship, and to oppose by every means, lawful and unlawful, the introduction of any other language into the churches, to the great damage, oppression and grievance of the members of the German Evangelical Lutheran Congregation, in and near Philadelphia aforesaid, to the evil and pernicious example of all others, in the like case offending, and against the peace and dignity of the commonwealth of Pennsylvania.

For the Attorney General.

EDWARD INGERSOLL.

Note—The following names were indorsed on the bill of indictment, "*Ignoramus*," by the grand jury, to wit: F. A. Gildner, Frederick Oberthuer, Charles Bartholoma, Charles Dominique, John Andrew Maurer, John Zehner, William Walter, John Mickebine, George Selbert, Melchior Wahl, John Noole, Nicholas Hartzell, Elias Frey, and George Mark.

*Articles of Association of the St. Michael's Society.**

ART. 1. THE Association shall be known by the style and title of the St. Michael's Society. Its objects are to promote the Christian religion, according to the doctrines of Luther, and to unite the members of the German Lutheran Congregation, by having divine service performed in the church, in the English as well as the German language.

ART. 2. The members of the society shall consist of contributing members being communicants of the German Lutheran Church, in Philadelphia, who are of good moral character, and friendly to associating the English with the German language, in the service of the church.

ART. 3. The officers of the society shall consist of a president, a secretary, and treasurer, who shall be elected annually at the stated meeting of the society in January. In the absence of the president, a president pro-tempore may be appointed.

* The society derives its name from the old church "*St. Michael*," belonging to the congregation.

ART. 4. The stated meetings of the society shall be on the second Thursday of every month; but the president may convene the society whenever he may deem it necessary.

ART. 5. Every person on becoming a member shall pledge himself to support, by every honorable means, the objects of the society, and shall subscribe these articles.

Extract from the Works of Luther, 3d volume, page 464.

"It is no-wise my intention to expect the Latin language from our religious worship, the whole of my drift is the improvement of our youth. And was it in my power, and the Greek and Hebrew were as common with us as the Latin, and contained such excellent church music, and psalmody as the Latin does, it would be my wish to use all the four languages alternately, Sunday after Sunday, so as to sing and read in German, Latin, Greek and Hebrew. I do not hold it with those in any way, who pin themselves to one language only, and despise all others, for I wish to raise our youth and people so, that they may become serviceable to Christ, *in other and strange countries*, and be able to converse with the inhabitants; otherwise we shall fall into the predicament of the Waldenses, in Bohemia, *who have kept their faith so long a prisoner to their language*, that they cannot converse with any one, so as to be understood, unless he first learns their language. The holy spirit did not in the beginning of christianity conduct in this way. He did not tarry at Jerusalem until the whole world should collect there to learn Hebrew, but he *endowed the apostles with different tongues*, to enable them to preach the gospel wherever they came. This example I would rather follow, and it is just that our youth should be exercised in different languages, not knowing what use the Lord may make of them."

NOTICE.

Philadelphia, September 19, 1815.

Mr. John Stroup.

Sir,

Viewing with regret, the change from a flourishing, to a declining situation, of the German Lutheran Congregation, and believing that the same may be revived, you are requested to attend a meeting to be held at the school house of the Congregation, in Cherry-street, on Monday evening next, the 25th inst. at 7 o'clock, to consider what method ought to be pursued to promote this object.

S. L.

MANY MEMBERS.

Mr. Leib's Note to the Congregation, requesting a conference upon the Subject of English Preaching.

A meeting of a considerable number of the congregation of St. Michael's and Zion's Churches, was held last evening at the school-house, to consult on the propriety of having divine service performed in a language intelligible to them and their children, and they appointed a committee to confer with the corporation on this interesting subject. The committee desirous of conduct-

ing the delicate task assigned them in the true spirit of christianity, and with a single eye to the union and harmony of the congregation, are ready and anxious to enter into a conference with the corporation, and flatter themselves, that their overtures will be met with the same spirit which dictated this application, and which actuated the members of the congregation they represent. They have full confidence, that the good sense and Christian sentiments of the corporation will induce them to meet this overture without delay, and that an arrangement will be made, satisfactory to all parties, and which will reinstate the congregation in its former flourishing condition, so desirable to its best friends, and the prosperity of the Lutheran church.

By order of the Committee.

(Signed) M. LEIB, Chairman.
September 26, 1815.

Mr. George Honey, President
of the Corporation.

NOTICE.

The Members of the German Lutheran Congregation, favorable to the introduction of divine service in the English, as well as German language in their churches, are earnestly requested to attend an adjourned meeting at the school house in Cherry-street, on Tuesday evening next, the 31st instant, at half past 6 o'clock.

Philadelphia, 30th October, 1815. (Committees to report.)

Observations addressed to the members of the German Lutheran Congregation, in and near Philadelphia, upon the subject of preaching only German, and the consequent decline of their Congregation.

THE sole object of all religious institutions among Christians, is to propagate the gospel. In this great point all the various sects agree. We behold as members of the Bible Societies established in the United States, Christians of every denomination. We see in them, the Quaker, the Episcopalian, the Methodist, the Baptist, the Catholic, the Universalist, the Presbyterian and Lutheran, however divided on other points; united in this first Christian principle, to *disseminate the Gospel*. The transactions by these societies of the Holy Scriptures into ever known language, for the purpose of gratuitous distribution, establishes this beyond the possibility of dispute. If the Scriptures be susceptible of being translated into all languages, the doctrines they contain can, with equal perspicuity, be preached and expounded in them all. The Christian religion is an universal religion intended for all mankind, and no system is in conformity to it, which is pinned fast to any language. In the exercises of devotion, if we have a heart filled with thanksgiving, and feel our dependence for support upon an all-merciful God, it is no matter in what language our prayers are offered. The prayers of the Frenchman and the Spaniard, of the German and American, are equally intelligible, and equally accepted. God is no respecter of persons—nor of language.

But we see further, not only Christians of all the various denominations mentioned, united to disseminate the gospel—but we see each different sect zealously striving to make proselytes to their particular tenets. The erection of churches, in which their own doctrines only are suffered to be preached, in every direction where there is a possibility to collect a congregation, is at once a demonstration of this fact. Within a very few years, in

this city and its liberties, how many Quaker, Baptist and Presbyterian meeting houses have started up? How long is it since the Episcopalians built a church, who, it is known, are now building another, perhaps, in some degree, to flourish upon the ruin of yours. And have not able and zealous preachers risen with them, and made proselytes and congregations? Have not these congregations been kept together and supported? Are they not in increasing and flourishing circumstances, whilst yours bears the strongest marks of decay? And can we for a moment doubt, but that these exertions and these institutions have the best effects upon the lives and morals of society? Are they not laudable and praise worthy? Should examples of this description be overlooked? Or should they be followed? Should we close our minds to the lessons of instruction they give us? Or should we profit by them?—Let those who with sincerity believe the Lutheran tenets, put their hands upon their hearts, and conscientiously answer these inquiries, and act accordingly.

It is hoped the foregoing observations have demonstrated—First, That the only object of religious institutions is to propagate the gospel, and that no Christian system depends upon language. Secondly, That as it is the practice of every Christian sect to make the way to a knowledge of their doctrines smooth and easy, it is likewise the duty of every one who conscientiously believes the Lutheran tenets, to aid in their support and propagation.

It will now be shewn, that, in consequence of the endeavor in this country to inculcate the Lutheran doctrines in the German language alone, the Lutheran worship and tenets have declined with the German language.

The first Lutherans in the city of Philadelphia were Germans. They formed a congregation, built a church, (St. Michael's) and obtained a charter from the Proprietary government, in the year 1765. This charter recites, that "the communicating members of the congregation, amounted to above five hundred heads of families," were "too numerous to be conveniently seated in one house of worship," and authorizes the building of a second church. This second church (Zion) was built—the congregation increased and flourished, and, whenever service was performed, both churches was filled. But let us consider the condition of the congregation in 1765, fifty years ago, with but St. Michael's church. And what was its condition? That church could scarcely contain two-thirds of the then congregation. There were "above five hundred heads of families who were communicating members." "There were two, three, and four hundred children of the congregation baptized yearly." And were they neglectful of these children so baptized? Did not those who originally erected this Lutheran church care about their descendants, their posterity? Consult the records they have signed.—Let the deeds of these our venerable ancestors, who now moulder in the grave—let Zion's church, (built for the youth of the congregation) a standing monument of their desires, reared by their industry, speak of them.—In these times past, there was an animation and spirit that well suited a religious society, a Christian congregation. What a sad reverse now! How inanimate, how dead, how spiritless, how deserted in 1815! Look at our places of worship. Look at the present congregation, and cannot more than all the attending (to say nothing of the communicating) members be accommodated in St. Michael's church, which was too small fifty years ago? The answer may be reluctant, but it must be—Yes! The number of children christened now, and the number of confirmants in each year, are small in the same proportion. There is of late no increase, but a constant diminution. So long ago as the year 1780, when an act from the commonwealth of Pennsylvania, amendatory of the first charter, was obtained, a third church was authorized and contemplated to be built—but it never has been, while churches for the reception of all other religious persuasions, except the Lutheran, have since then been doubled and trebled. And to what cause is all this to be attributed, but that the preaching in the Lutheran churches has been in a language not suited to the times, to the country, to the society where this congregation exists. In the early part of their establishment they flourished, because they were suitable to the

time, the country, the society—but now they are going to ruin and decay, because they are not adapted according to these circumstances as they now exist. Fifty years ago, Philadelphia did not contain a third of its present inhabitants. The Germans then were as large a proportion as any other description of the population. Where they existed in such numbers the German language in a great degree prevailed. They built churches, and preached in German, because it was generally understood. But what is the situation of things now? Is the German language in this large city understood by as many persons now as it was then? Look at your empty churches and schools, consult your families, your children, and you are fully answered. How very small then must the number, who understand German, be in proportion to the present large population? The character of the population has entirely changed, and how great the necessity of change and reform along with it! How important to adapt your churches to the times, and to the circumstances of society, by preaching in a language that now prevails. Can ingenuity itself devise, a reason, why in such a situation of things, the German language should be preached, in utter exclusion of the English? Why cannot German and English be preached in the same congregation, as well as they can both be spoken in the same family? This does not disturb the harmony of families, and how can it that of a congregation? If Lutheranism is to be kept up, it is matter of imperious necessity to expound the doctrines of Luther in English, as well as German. Those who ask for English service have no disposition to do away the German. They are willing to put both languages on the same footing—to have the German preached as long as the English. They consider themselves, as Germans and the descendants of Germans, bound by honor and by duty to support the Germans and their interests, within any reasonable bounds. But they fear some of the Germans do not comprehend their own interests. They are dividing, they are separating the German family. They will lose the advantages they might reap in society, by maintaining a union and understanding with those born in this country, of German descent. If they persist in their adherence to German preaching alone, what do they do, but endeavor to cut off their own children along with others, from being partakers of the gospel benefits. A house thus divided against itself cannot stand. You, who send missionaries abroad, that are anxious about the conversion of the Indian and Heathen of every description, do not disregard the welfare and happiness of your own child or grand-child's soul, or the soul of your fellow citizen, because he does not understand the German. Neither the Indian or the Heathen understand it, and when you are concerned about those you will perhaps never see, those among whom you live surely deserve some of your solicitude and regard? Let it be recollected that English preaching is asked, upon condition that the German goes and continues along with it. Reflect that this is a reasonable proposition. That it is so reasonable it should carry unanimously. That nothing else will unite, will harmonize the congregation, and put the apprehension that the German will be done away for ever at rest. You cannot deny it, and do your duty to your family, your neighbor, and your God. Do unto others as you would that they should do unto you, for that is the law and the prophets. It is the great Christian rule of justice. If you do not practise this now, perhaps, in a little while, you will have occasion to repent it in sackcloth and ashes. Then you will recollect who those were who wanted to secure your German, and who wished English preaching upon that principle alone. Do not turn into enemies those who are disposed to be your friends. Circumstances that cannot be controled have given, or at any rate soon will give, a preponderance to those who desire English service. Your own sons every day increase their number, and what will your situation be, if, in the might of their power, they rise and obtain English preaching and English service, without any condition at all, as it regards the continuance of the German. The present is the time to harmonize the congregation—do your duty as parents and members of society—unite—let the congregation revive and

flourish—Its decline is seen, is felt—and no more wisdom is necessary to perceive the remedy, than to be in the possession of common sense.

Extracts from an original German work, entitled, "Robinson the younger, an amusing book for children, appertaining to the general School-encyclopedia, by Joachim Henry Campe.—Fifth Edition.—Reuttlingsen, printed by John Jacob Fleischhauer, 1800."—Intended to illustrate the meaning of the phrase "mit Leib und Leben."

The above work is partly narrative, and partly dialogue. Robinson's story is told by a father, to his children and family, and the abstractions made among them constitute the dialogue. The concluding part of the preface, page 16, is as follows: "Before I take leave of my reader, let me be permitted, to call the attention of those interested in the education of the young, to another design, which during the composition of this book, also became in my view, of much importance. By a true representation of real family-scenes, I wished to give to instructors, an example of parental and filial behavior, not entirely superfluous, such as ought necessarily to exist between a preceptor and his pupils. Where this happy deportment is once introduced with all its natural simplicity, many of the steep and hindrances which impeded the progress of moral education, sink of themselves; but, where it is not,—well,—there recourse must be had to the circle of scholastic subtilities, where deviations are so manifold, where every thing is far from being settled throughout a seeming sufficiency of observations.—

"Besides, this design contains the reason, why I rather introduced *real*, than *fictitious* characters speaking; and generally preferred *copying conversation* which was in *my way and real*, to making such as would have been *secret or subtle*."

According to the author Robinson lived upon a desolate island, and had rescued a savage, whom he afterwards called Friday, from his enemies who were about to destroy him. In pages 245, &c. the following narrative is contained:—"He (Robinson) gave him (Friday) also to understand by signs and gestures, that altho' he had taken him under his protection, yet it was only upon condition of the most implicit obedience; that he must therefore be content to do, or not to do, all that he, his Lord and King, should think proper to command, or to forbid. He made use of the word *Cacique*, by which the savage Americans designate their chiefs, as he luckily remembered to have once heard.—More by this word, than by the signs connected therewith, did Friday understand the meaning of his Lord, and discovered his satisfaction, by repeating several times in a loud voice the word *Cacique*, at the same time pointing to Robinson, and then again throwing himself at his feet. Yes, to shew that he well knew, what the royal authority signified, he grasped the spear, put the same into the hands of his Lord, and placed the point thereof upon his own breast, probably by this means to shew, that he was in his power *mit Leib und Leben*. (with body and life).

Page 373. "Robinson startled, and asked hastily, who was there?

"O Lord! O Lord! answered Friday, one—two—three—six canoes! In his anguish he could not recollect the number six.

"Robinson scrambled quickly up the hillock, and discovered, not without horror, the truth of what Friday had reported—Six canoes filled with savages that were just about landing.—He came down again in a hurry, encouraged the trembling Friday, and then asked him: if he was determined to stand true in support of him, in case a battle ensued between him and the savages? *Mit Leib und Leben*, (with body and life,) answered he, who by this time had recovered himself, and recalled his warlike valor. Well then,

replied Robinson, we will try if we can prevent these barbarians, from effecting their horrible purposes. I will acquaint you with my designs upon the way, *it is now no time to talk, but to do.*—Page 378. "He who sees all, knows why we have *ventured our lives*, and no doubt will preserve us our lives, if of use to us. His will be done! Upon this he reached his hand to his fellow-warrior, and they reciprocally promised to stand true in support of each other, *with the last drop of blood.*" (Several of the savages were now killed.)

When the inhabitants of the island had increased to three besides himself it is said pages 387, &c. "The latter (Robinson) could not refrain from smiling at the thought, that he became constantly more like a regular sovereign. The whole island was his property, his subjects who were all indebted to him for their lives, depended only upon his will, and were bound to venture for him *Leib und Leben*, (body and life,) if necessary."

Upon the prospect of a large increase of inhabitants it is said page 406, "Whoever wishes to live upon Robinson's island, and to partake of its conveniences, must bind themselves—page 404; 4thly, "without murmur to perform all sorts of labor, that shall be necessary for the good of the whole society, and in case of need to support the Lord of the island, *mit Leib und Leben*, (with body and life.)"

CHARTER
OF THE GERMAN LUTHERAN CONGREGATION,
IN AND NEAR THE CITY OF PHILADELPHIA,

/IN THE
PROVINCE OF PENNSYLVANIA.

THOMAS PENN and RICHARD PENN, Esquires, true and absolute proprietaries of the province of Pennsylvania and counties of New-Castle, Kent and Sussex on Delaware; To all unto whom these presents shall come, Greeting.

SECTION 1. WHEREAS, divers members of the German Lutheran Congregation, His Britanic Majesty's liege and naturalized subjects, residing in and near the city of Philadelphia, have at a great expence purchased four lots of ground, and have erected thereon a large church, called *St. Michael's Church*, with a school house and parsonage house, and have set apart the remainder of the said lots for a burial place and other public uses of the said Congregation.

SECT. 2. AND whereas, it hath been represented to us by the Reverend Henry Muhlenberg, the present rector of the said church, Henry Keppeler, David Sickle, Lawrence Bast, Jacob Graeff, Adam Weber, David Schaeffer, Andrew Boshart, Daniel Grub and Adam Krebs, the present trustees of the said church, Martin Rauh, John Kuhn, Henry Krauss, Peter Draess, Martin Rees and Jacob Fox, the present vestrymen of the said church, and Adam Phister, Andrew Bertch, Andrew Mayer, Philip Hall, Siegmund Reily and Nicholas Weber, the present church wardens of the said church, that they, and all the communicating members of the said Congregation amounting to above five hundred heads of families, have made and signed fundamental articles, tending to the orderly and good government of the said church, the advancement of true piety and the forming good christians, faithful subjects to His sacred Majesty, and useful and peaceable members of the government under which they live; but, that for want of being a body corporate, they, the said rector, trustees, vestrymen and church wardens find many difficulties in the execution of the said wholesome ordinances, as well as in the management and preservation of lots, burying ground, and other estate or appurtenances, with which the providence of God, through the common charity of their fellow christians and members, has been pleased to bless the said church, and the said rector, trustees, vestrymen and church wardens declaring their grateful sense of the uninterrupted enjoyment of their inestimable civil and religious privileges in our said province, have prayed us to incorporate them, by the name of the rector, vestrymen and church wardens of the German Lutheran Congregation in and near the city of Philadelphia in the province of Pennsylvania,—And that they and their successors, by such name may be erected and constituted a body corporate and politic, and have perpetual succession, with a particular provision, for erecting one church more within the said city or the Liberties thereof, for the further accommodation of the members of the said Congregation, which are already become too numerous to be conveniently seated in one house of worship.

SECT. 3. NOW KNOW YE, that We, favouring the prayer of the said rector, trustees, vestrymen and church wardens, and willing, as much as in us lies, to encourage virtue, piety and charity, and for other good causes and considerations, us thereunto specially moving; have granted, ordained, constituted and appointed, and by these presents do, for us, our heirs and successors grant, ordain, declare, constitute, and appoint, that the said Henry Muhlenberg, rector, Henry Keppeler, David Sickie, Lawrence Bast, Jacob Graeff, Adam Weber, David Schaeffer, Andrew Boshart, Daniel Grub, Adam Krebs, Martin Rauh, John Kuhn, Henry Krauss, Peter Draess, Martin Kees, Jacob Fox, Adam Phister, Andrew Bertch, Andrew Mayer, Philip Hall, Siegmund Reily, and Nicholas Weber and their successors, duly elected and nominated in their stead, in the manner hereinafter mentioned, be and they are hereby created one corporation and body politic, to have continuance for ever, by the name of, the rector, vestrymen and church wardens of the German Lutheran Congregation, in and near the city of Philadelphia, in the province of Pennsylvania.

SECT. 4. AND we do hereby for us, our heirs and successors, grant, ordain and declare, that the said rector, vestrymen and church wardens, and their successors, by the name aforesaid, shall for ever hereafter be persons able and capable in law, to purchase, have, receive, take, hold and enjoy in fee simple or any other lesser estate or estates, any lands, tenements, rents, annuities, liberties, franchises, and other hereditaments, within the said province of Pennsylvania or the three lower counties of New-Castle, Kent, and Sussex on Delaware, by the gift, grant, bargain, sale, alienation, enfeoffment, release, confirmation or devise, of any person or persons, bodies politic or corporate, capable to make the same.

SECT. 5. AND further, that the said corporation and their successors, may take and receive any sum or sums of money, and any kind, manner or portion of goods and chattels, that shall be given or bequeathed to them by any person or persons, bodies politic or corporate, capable to make a gift or bequest of the same, which gifts and bequests or the monies produced by the same, to be laid out by them in a purchase or purchases of lands, tenements, messuages, houses, rents, or hereditaments, to them and their successors for ever.

SECT. 6. AND WE will and require, that the rents and revenues of the said rector, vestrymen and church wardens, and their successors be from time to time applied by the said rector, vestrymen and church wardens and their successors, for the maintenance and support of the rector, ministers and officers, duly settled and officiating in the said Lutheran Congregation, putting in good order and keeping in repair, the burying-ground, school and parsonage houses and other houses, which do now or hereafter shall belong to the said Congregation, and for supporting, repairing or rebuilding the said St. Michael's church, and erecting and supporting one church more within the said city of Philadelphia or Liberties thereof, for the better accommodating the said Congregation, and that the said rents, revenues or other estate of the said corporation, shall not be appropriated to any other use or purpose whatsoever.

SECT. 7. AND WE do further will and require, that the said rector, vestrymen and church wardens and their successors, shall not by deed, fine or recovery or by any other ways or means, grant, alien, or otherwise dispose of any manors, messuages, lands, tenements or hereditaments in them and their successors to be vested, nor charge or incumber the same to any person or persons whomsoever.

SECT. 8. AND WE do further for us, our heirs and successors authorize and empower the said rector, vestrymen and church wardens and their successors, or the majority of them, met from time to time, the rector always being one to make rules, bye-laws and ordinances, and to do every thing needful for the good government and support of the said Congregation; Provided always, that the said rules, bye-laws and ordinances be not repugnant to the laws and statutes in force in the kingdom of Great Britain or in

the province of Pennsylvania, and be duly entered and registered in the vestry-books of the said Corporation.

SECT. 9. AND We do hereby give and grant unto the said rector, vestrymen and church wardens and their successors, full power and authority, to make, have and use one common seal, with such device and inscription as they shall think proper, and the same to change, break, alter and renew at their pleasure.

SECT. 10. AND We do further grant and ordain that the said rector, vestrymen and church wardens and their successors, by the name before mentioned, shall be able in law to sue and be sued, plead and be impleaded, in any court or courts, before any judge, judges or justices, within the said province of Pennsylvania or said counties on Delaware, in all and all manner of suits, complaints, pleas, causes, matters and demands, of whatsoever kind, nature or form they be, and all and every other matter and thing therein, to do in as full and effectual a manner, as any other person or persons, bodies politic or corporate, within that part of Great Britain, called England or within the said province of Pennsylvania, or the said counties on Delaware, in the like case may or can do.

SECT. 11. AND We do further for us, our heirs and successors grant, ordain and declare, that the said Corporation shall always consist of nineteen persons, that is to say, the rector for the time being, twelve vestrymen and six church wardens, which vestrymen and church wardens shall continue in their respective offices for the space of three years, and shall be chosen by the contributing members, being communicants of the said Congregation, that is to say, the first election to be on the first Monday, which shall be in the year of our Lord one thousand seven hundred and sixty six, and the next election to be on the first Monday, which shall be in the year of our Lord, one thousand seven hundred and sixty nine, and so on the first Monday of every succeeding third year forever.

SECT. 12. AND further at the special request of the said Congregation, and in conformity to certain fundamental articles by them agreed and settled upon, on the eighteenth day of October one thousand seven hundred and sixty-two, We do will, ordain and declare, that the beforementioned Henry Keppele, David Sickle, Lawrence Bast, Jacob Graeff, Adam Weber, David Schaeffer, Andrew Boshart, Daniel Grub and Adam Krebs, or the survivors of them, who have been principal founders of the said St. Michael's Church, and have taken the utmost pains to promote the welfare of the Congregation, shall without any election be and continue among the number of the vestrymen, so long, as they behave agreeable to the said fundamental articles, and only so many vestrymen and church wardens shall be chosen every third year as shall make up the number of eighteen, together with and including the said nine persons or such of them, as shall be surviving at the time of such election, or not removed by the Congregation agreeable to the articles aforesaid.

SECT. 13. AND We do further give and grant to the rector with the church wardens and vestrymen so chosen or continuing in office, full power to elect their own officers; Provided always nevertheless, that in case of the death or removal of a rector of the said Congregation and until another rector shall be duly appointed, agreeable to former method and usage, the church wardens for the time being with the consent of the major part of the whole vestrymen, in vestry met, shall have the same powers and authorities, relating to the disposition of the rents and revenues of the said corporation, as is hereinbefore vested in the rector, church wardens and the vestrymen.

SECT. 14. AND LASTLY, We do, for us, our heirs and successors, grant, declare and ordain, that these our letters patent, and charter, and every article herein contained, shall be in all things firm, valid, sufficient and effectual in the law, unto the said rector, vestrymen and church wardens, community and corporation and their successors for ever, according to the purport and tenor hereof, without any further grant from us, our heirs and

successors to be procured or obtained; Provided always, and it is hereby declared and ordained, that the clear yearly value of the messuages, houses, lands, tenements, rents, annuities or other hereditaments and real estate of the said corporation, shall not exceed the sum of three hundred pounds sterling, till one other church, besides the said St. Michael's church shall be by the said Congregation erected, agreeable to the tenor hereof. And after such church shall be erected, for their further benefit and use, that then the clear yearly value of such the whole real estate of the said community and corporation, shall not exceed five hundred pounds sterling, which yearly estate of three hundred pounds sterling in the former case, or of five hundred pounds sterling in the latter case, shall be taken and estimated, exclusive of the monies arising from the letting of the pews of the said churches, or for opening the ground for burials in the church-yards, belonging to them, and also exclusive of the voluntary contributions of the members for the support of the rector and ministers, duly officiating to the said Congregation, which yearly real estate and income, ascertained and limited as aforesaid, shall be disposed of by the rector, vestrymen and church wardens for the time being towards the purposes hereinbefore mentioned.

IN TESTIMONY whereof, We have caused these our letters to be made patent, and the great seal of our said province to be hereunto affixed. Witness JOAN PENN, Esquire, Lieutenant-Governor and Commander in Chief in and over our said province of Pennsylvania and counties of New-Castle, Kent and Sussex on Delaware, the twenty-fifth day of September, in the fifth year of the reign of our sovereign lord George the 3d, king of Great Britain, France and Ireland, Defender of the Faith, &c. and in the year of our Lord one thousand seven hundred and sixty five.

JOHN PENN.

Recorded in the office for recording of Deeds for the city and county of Philadelphia, in Commission Book A. vol. 3. page 31, &c. the 16th day of October, 1765. Witness my hand and seal of office aforesaid.

C. BROCKDEN, Recorder.

IN order that the public should have a correct knowledge of every thing relating to the preceding trial the publication of it has been delayed until the verdict of the Jury on the information in the nature of a writ of *Quo Warranto* had been given, that the result might be communicated in this appendix.

By this information the persons chosen at the election for officers of the corporation held on the 6th of January 1816, to wit: George G. Woelper and seven others, (three of whom were convicted of the conspiracy, described in the preceding pages of this book) were called upon to shew by what authority they exercised the offices of vestrymen and church wardens of the German Lutheran Congregation; the advocates of English preaching contending that their election was illegal, and that a free exercise of the elective franchise had been prevented by menaces and force.

The evidence on the trial for conspiracy giving a full account of the events of the election day, and the following charge of his Honor Judge Gibson exhibiting an accurate view of the whole case, the reporter thinks it unnecessary to make a more explicit statement.

Charge of the Honorable — Gibson, one of the Justices of the Supreme Court of the State of Pennsylvania, upon the Quo Warranto delivered at a Nisi Prius Court held at Philadelphia in November 1816.

THIS is an information in the nature of a *Quo Warranto*, by which the Defendants are called upon to shew by what right they exercise the offices of church wardens and vestrymen of the German Lutheran Congregation in and near the city of Philadelphia. They answer by their plea that they were duly elected to these offices on the sixth day of January 1816, pursuant to the charter of the corporation. The Commonwealth by her replication denies that they were so elected, and this is the fact you are sworn to try. It is incumbent on the Defendants to prove the affirmative part of this issue, and for this purpose they produce the return of an election held at the school house in Cherry street, belonging to the corporation, on the 6th of January, 1816, by which it appears, that the Defendants had respectively a majority of the votes given at that election.—This is sufficient for their purpose in the first instance; for the law will presume that every thing was rightly transacted till the contrary appear.—

To rebut this presumption and to raise a contrary one; the Counsel for the commonwealth contend that it appears in evidence, the inspectors who superintended this election, adopted a set of rules, wrong in themselves with respect to the qualification of voters—1st, *That they admitted aliens to vote.* And 2d, *That they established these rules also, viz. that a seat in one of the churches of the congregation, having contributed and communicated within a particular period of time, and having been a regular attendant on divine service in one of the churches were requisite qualifications, &c. that a seat held in any other church disqualified.*—

1st. With respect to *Aliens* I am of opinion and I lay it down to you as the law, that an alien is not entitled to vote under the fundamental articles and the charters of this corporation.—The charter granted by Mr. Penn, in 1765, recites, “that divers members of the German Lutheran Congregation, his

Majesty's liege and naturalized subjects, had, at great expence, purchased four lots of ground in Philadelphia, and had erected thereon a school house, parsonage church, &c. and had set apart the residue for a burial ground, and that they had signed fundamental articles tending to the formation of faithful subjects of the king. Hence it is contended on the part of the defendants, that a strong and necessary implication arises, that the grant was intended to be limited to subjects, but residing here at the time, and owing a temporary allegiance to the king of Great Britain, and consequently such persons were included in the term liege subjects." Such persons it is true, did owe allegiance to the king during the time they lived under the protection of his government, and might have been punishable for treason. But it is extremely obvious the words were not used in the sense contended for, because it would have been unnecessary to mention, "naturalized subjects" in the same sentence, or indeed, to have said any thing at all about subjects, if all persons at the time were intended to be included. The great object of the proprietance here at the time, was to induce sober and industrious emigrants to fix themselves permanently in Pennsylvania. It may reasonably be supposed they would from reasons of policy be induced to give such persons advantages denied to those who had not given them the strongest pledge of their intention in this respect, foreigners who had not resided in the state long enough to entitle them to the benefit of the naturalization laws, might in the same time participate in all the benefits of worship in this congregation, and would be excluded from an interference in its civil concerns alone. The charter of 1780, providing that each voter shall be of the age of eighteen years, and qualified in other respects according to the fundamental articles, and the provisions of the charter of 1765. Now there is no difference of qualification, observable between that charter and the church regulations of 1791, which contains, as the defendants aver, the substance of the fundamental articles, unless it be a difference by implication on this subject, and if as I have contended, it do exist, the legislature have ratified the restriction originally imposed, it is also worthy of remark that the legislature would not have insisted upon a conformity with the provisions of the charter of 1765, as well as the fundamental articles, unless it had been conceived that charter superadded some qualification not contained in the articles. Now the charter specifies no qualification unless it require by implication, that the voter be a subject. It has most weight with me also, that the proprietaries cannot reasonably be supposed to have intended to place the temporal concerns of this congregation at the mercy of any sudden influx of new comers, who might choose to qualify themselves by contributing and receiving the sacrament, if such qualifications only were essential.

2. The fact of holding a seat in one of the churches of the congregation, contributing or communicating within a particular period, regular attendance at church, or of holding a seat in any other church, might be a subject of enquiry upon a question whether he was actually a member of the congregation at the time. The absence of all or a number of these circumstances might fairly indicate that the party either never had been a member, or had tacitly relinquished that character. But if the inspectors required either all or any of these circumstances as qualifications to be superadded to membership, admitted or established, the rule was wrong. It is your business to ascertain the fact.

If then at this election the inspectors adopted a system of rules erroneous as regards the qualifications of voters, the legal consequence will be that the presumption which the law raises in favor of the return offered, will be destroyed, and a contrary one will arise in its stead, to wit, that the inspectors having proceeded by rules, wrong in themselves, a wrong result was thereby obtained. And although the return will not thereby be conclusively rendered void, it will be insufficient to establish that the defendants were duly elected, unless they exhibit additional proof, sufficient to convince you they would have a majority after deducting the illegal votes received under these rules,

The counsel for the commonwealth further, except to this return that the inspector had not legal authority to hold the election. If they succeed on this point, it will be decisive against the defendants for the whole proceeding will be void.

They alledge that the president of the corporation from whom these inspectors derive their authority, had no power to appoint; the bye-law for that purpose being void, and that at least one of them, Frederick Hæckley, was not eligible, he being a candidate and one of the defendants.

1st. Should the bye-law to be valid, and the appointment by the president of the corporation good. It is absolutely necessary that the inspectors should be designated with such legal certainty, that they may be officially known by the corporation, who are to receive the return from their hands, no provision is made on the subject by either charter. From whom then will the corporation be bound to receive a return? From any person who may please to present one, and aver he was duly chosen by the qualified voters. It ought at least to be signed by a majority of all the qualified voters. But how shall the corporation ascertain whether the names subscribed, be of qualified voters or not, or whether the number of signers constitute a majority? But the case of a division, each parts choosing its own inspectors and holding a separate election; from which shall the corporation receive the return? or shall it receive from both? But granting all these objections may receive a satisfactory answer, and that the electors have the right of appointment. By what process are they to make it? By acclamation. The same exhibited by the evidence in the cause furnishes a strong argument against that. It must of necessity, be by a previous election. But who shall have authority to hold it and certify its proceedings? For proper officers for these purposes, are as essential to the previous as to the main election.

It comes to this in the end, that the inception of authority on the subject, by necessity must be from the corporation. Our general elections are constructed on a similar principle. The constable of the township holds the previous election. He derives his authority for the purpose, not from the electors, but the law. If the law invaded the elective franchise in this particular, it would be unconstitutional and void. If it be said, the constable is originally elected by the people, and legally with a view to the performance of this duty, I answer so are these corporators. The subject then essentially required legislative provision. No valid election could be held without it. Whence is it to proceed. The legislature have refused to supply what was deficient. But it has vested it in the corporation. Then, why should that power not be held to extend to this subject. The corporation indeed may not impair the rights of the electors, but it has authority to make all ordinances necessary to give those rights full and firm effect, and this bye-law I apprehend, is absolutely necessary for that purpose.

It has been urged by the council for the commonwealth, that the appointment by the president not being made in the corporation, but when it was not in session is void. I perceive no force in this objection. The president can exercise no legislative power except during the setting of the corporation. but this appointment was an *executive* and not a legislative act.

It is further urged under this head, that Frederick Hæckley, one of the inspectors and a defendant in the cause, being a candidate, and returned at this election, is entirely void. I hold that this matter is not sufficient to avoid the election except as regards Mr. Hæckley himself. The inspectors at the election were also judges. Mr. Hæckley had a direct interest in every question submitted to his decision. No one can be a judge in his own cause. The law therefore to secure complete impartiality, removes at once every motive of a contrary kind by declaring the party intelligible, and putting all probability of his obtaining the office out of the question. This objection although it does not effect the other defendants, is nevertheless conclusive against Mr. Hæckley.

3. The counsel for the commonwealth alledge that all the ballots given or the defendants, bore the impression of an eagle, and they produce a bye-

law of the corporation by which is enacted, that if a ticket shall contain any thing beside the names of the persons voted for, it shall not be counted. To obviate this objection, the defendants have called witnesses to shew the origin of the rule, and the mischief that led to it; and contended with great propriety, the operation of the rule ought not to be extended to matters not within the mischief intended to be remedied. This rule of construction I take to be a sound one. According to the evidence on this part of the case, a practice had obtained of putting the names of lewd women, and indecent, trivial and ridiculous remarks on the ballots, inconsistent with the solemnity due to a religious occasion, and offensive to the feelings of the sober part of the congregation. It was to provide a remedy for evils of this nature that the bye-law was introduced. Is it applicable to the present case? In a religious society who profess to govern their actions by motives of conscience and duty, the organization of a party to act exclusively from party motives and party feelings, is highly criminal. It has a direct tendency to sow discord, infuriate the mind and destroy all harmony, and christian charity among the congregation. The use of any device upon the ballots as a badge of such party, would be highly indecent and of course within the spirit, as well as the letter of this bye-law. As there can be no doubt but that the impression of the eagle was used at the election as the badge of the party, and of course that such ballots being illegal, that they were not elected. I hold this objection to be fatal to their election.

4. It is further objected, that the election was neither *free* nor fair, because it is alledged, 1st. The voters were overawed by violence at the polls, 2d. That the inspectors acted corruptly, and 3d. *Bribery* was resorted to by the German party.

The first objection under this head depends upon matter of fact, of which you are the proper pledges. The witnesses on each side give opposite accounts of the same transactions. It is for you to choose which side you will believe in case you will believe either. It is certain you cannot believe both. But taking the story told by the English party respecting the affray at the commencement of the election, they were clearly in the wrong. The appointment of Lehrs and Hæckley, as inspectors are clearly valid. The German party had therefore a right to prevent by violence, those who were proceeding without color of authority to usurp these offices, provided no more force was used than was absolutely necessary for the purpose, if in the course of the day there were other acts of violence on the part of the German party, it will be proper for you to consider their meetings, petitions, addresses, and various acts previous to the election, to ascertain the object and nature of such violence, and whether the defendants, or any of them were accessory thereto, for in no other point of view are such acts of evidence pertinent to the issue, unless perhaps as furnishing a guide from a comparison of circumstances, to test the general credibility of the witnesses who speak of those circumstances. If then you are of opinion there was an organized scene of violence on the election ground, and that the defendants were privy to it, you will be justified in presuming that a fair expression of the will of the majority was not obtained; but if such force existed without the defendants being accessory thereto, it would be absolutely necessary for the commonwealth to shew that a number of legal votes sufficient to change the result, was thereby prevented from being given.

If the inspectors acted corruptly, I have no doubt it invalidated the election and rendered it totally void. If they knowingly received illegal votes, they acted corruptly, although such votes were received indiscriminately from both parties. The law exacts from them the most scrupulous good faith and firmness of dealing. There is no evidence of any thing like bribery. The refreshments provided for the day, seem to have been intended for their mutual accommodation. There is not a tittle of evidence that even a cup of beer was offered or received as the price of a vote, to be given in a particular way, which alone could constitute bribery.

I apprehend, Gentlemen, I have stated to you all the essential principles of Law involved in the cause, I wish to be understood as having given my opinion on each of them positively and without reservation. You will apply them to the facts in the cause, and form your verdict accordingly.—

After the delivery of the preceding charge the Court adjourned for two hours, when the Jury brought in their verdict for the Commonwealth.

This trial commenced on Monday the 11th of November, and continued without interruption until the morning of the 6th of December following, when the Jury gave their verdict, which was the twenty third day.

A few days afterwards application was made and reasons assigned by the Defendants to the Supreme Court then sitting in bank for new trials in both Conspiracy and Quo Warranto cases. The following opinions were delivered by the Court, after two weeks very elaborate argument by the Counsels on both sides, on the 4th day of January 1817.

Extract from Chief Justice Tilghman's opinion.

Commonwealth vs. Eberle and all for Conspiracy, &c.

"It is contended on the part of the Defendants that the bye-law was good and therefore they had a right to use as much force as was necessary to repel Mr. Wagner who was illegally attempting to take his seat as an Inspector. I shall take the law to be so, which is all the Defendants can ask. It follows then that the acts of violence which took place at the election are to be thrown out of the case. But it remains to be considered whether the evidence was sufficient to convict the Defendants of the conspiracy. If it was, there ought not to be a new trial altho' the verdict so far as concerns the acts of violence may have been improper, because the Court, in passing sentence, may take that matter into consideration."

"The German petition is relied on as evidence of a conspiracy, the original is in the German language and Gentlemen of respectability and learning were called at the trial to prove that the German words the literal translation of which into English is *body and life*, are not to be taken according to the German idiom as any thing more than a cold figurative expression denoting great zeal and ardor &c." "If all the other speeches and actions of the persons who signed the petition had been such, as evinced a desire to avoid bloodshed it might have been fairly concluded that the words in the petition were used figuratively. But what shall we say to the menaces of blood used on other occasions by several of the same party. What shall we say to their actual disturbance of the English party when quietly assembled at the school house and that more than once, and what to those resolutions which disfranchised all members of the corporation who should be in favor of introducing the English language? The German Lutheran Congregation have the right of worshipping God in what language they please. No power on earth can lawfully force the English language on them, nor can any power withhold from them the use of that language if they chuse to adopt it. Their charter confines them to no language. It is the affair of the Congregation, to be decided by themselves only &c."

*The following was the opinion delivered by his Honor
Judge Yeates.*

IT has been urged on the part of the Defendants by their Counsel that their case was prejudiced by my blending certain historical facts in my charge, respecting the celebration of divine worship in the German Lutheran churches in the English language. It cannot be forgotten, that it was contended on their behalf, that the right of using the German language *exclusively* in the public service of their churches, was secured to them by their two charters, and that they were incorporated by the name of "the ministers, vestrymen and church wardens of the German Lutheran Congregation in and near the city of Philadelphia." The address of the Committee in favor of English preaching of 28th January 1805 to the Corporation,—the acts of the Corporation thereon of 28th February following, and their answer to the Committee of 2d March, together with a Counter Representation in the same year against the use of the English tongue in their religious exercises, were read in evidence, testimony was also given, that several of the adherents to the worship of the Deity in the German language *solely*, branded their opponents with a breach of their oaths, and solemn covenants in attempting to introduce the *partial* use of the English tongue into their religious worship. The counsels on both sides remarked fully on this evidence and deduced such arguments from them, as suited their respective purposes. Under such circumstances, I could not without manifest impropriety avoid delivering my sentiments on the litigated points, and the grounds on which they were formed. I took occasion to inform the Jury, that the term *German* in the two Instruments of Incorporation was mere matter of *description*, and that the principle had been established by us on full consideration, in the case of the Roman Catholics of the Holy Trinity church in Spruce street. I further brought to their recollection, what had been done in German Lutheran churches both here, and at Lancaster, favorable to English praying and preaching. I recommended to those who oppose public worship in English on conscientious scruples *alone*, to consult their Bibles, Confessions of faith, and Catechisms, and to determine deliberately for themselves. Yet while with the single view of preserving the union and peace of the church, I ascertained my *private* opinion, I explicitly declared to the Jurors, that the councils of the Lutheran churches *alone* were the *exclusive* judges, whether any other than the German language should be used in their public prayer or discourses.

It has also been said, that I gave no explicit opinion, whether the bye-law of 21st December, 1815, was valid or not, although I was requested so to do, by the defendants counsel. A bye-law may be good in part, and bad in part.—The reasons for my conduct in this particular are stated in my charge, to which I again refer:—They were satisfactory to my own mind. It did not appear to me to be essentially necessary, in order to form a correct verdict on the charge of conspiracy. The innocence or guilt of the defendants as to the offence for which they were tried, did not depend on the validity or invalidity of that ordinance. It is true, it might, if its validity was established, have conduced to shew, that the act of George Witman in nominating Inspectors to be voted for by the Congregation was unauthorized and led in a considerable degree to the subsequent disorder and tumult; but the charge was not confined merely to that overt act. The bye-law was read and remarked upon by the counsel on both sides, but no account was given of its passage, nor were the names of the members present entered on the minutes, and it came before me in a questionable shape. It is not necessary for me to adopt the strong language of one of the defendants counsel, "that there was no evidence either intrinsic or extrinsic, to shew that two thirds of the Corporation convened upon due notice given, to enact that ordinance." On this head I will only add, that I put it to the Jury to decide on the evidence, "whether viewing the conduct of Witman on the election day in the

most unfavorable light, it could justify the acts and declarations of those who had been stiled the German party."

Nothing is clearer to me, than that I could not legally permit the question to be put to Henry Heyle, of what Jacob Mechlin told him as to the views and objects of the English party in carrying on this prosecution. The defendants counsels openly avowed, that they did not mean to discredit Mechlin's testimony thereby. Mechlin had been examined as a witness for the Commonwealth, and the views and objects of the English party might have been enquired into, if he knew them; or if he did not, he might have been asked whether he had communicated them to Heyle: If he had denied the latter Heyle might have been produced to contradict him. Not a single witness had mentioned Mechlin's name before I decided on this point of evidence. I therefore did not deem myself authorised to consider as the agent of the English party, but expressed my willingness to hear any testimony, which might shew his activity in the business as a leader. In the manner in which the point came before me, I considered the answer to the question proposed as a mere hearsay, and that the language of Mechlin could not be imputed to the prosecutors without manifest injustice.

As to the legal import and quality of the paper called the *German Petition*, I had no difficulty in my mind about its construction, nor could I be misunderstood by the Jury. It is stated in the reasons assigned for a new trial, that so far as I expressed my opinion, I was mistaken in point of law. The language of the instrument was strong and ardent, and the exceptionable words "mit Leib und Leben" were understood in the original. Of the plain literal signification of those words there was no doubt. Three learned gentlemen testified, that according to their apprehension of the idiom of the German language, the paper contained no threats of violence, but shewed great earnestness in a cause supposed by the addressers to be good. Two of them however swore that under certain circumstances, the instrument might be susceptible of a different meaning. Certain acts and declarations of some of those who had signed the instrument, and particular intemperate expressions of one Christian L. Mannhardt an active partisan, who it was proved had drawn it up had been given in evidence by several witnesses. These I suppose would serve by way of context and have considerable weight in forming a correct judgment of the views and objects of the petitioners. But it was evident that the minds of both parties were greatly inflamed, and that the witnesses were strongly biassed by supposed interests and peculiar wishes. I ventured no opinion on the credibility of the witnesses, but submitted that consideration wholly to the Jury. I left it to them to decide, if they believed the testimony, whether force and violence were not intended to be used, in case the addressers should see a fit occasion for it, taking into view the facts preceding it and all the attendant circumstances. The Jury have convicted all the defendants and I will only add that on the fullest reflection, I see no reason to disturb their verdict.

Judge Gibson concurring in opinion with the Chief Justice and Judge Yeates, a new trial was denied in the case of the Commonwealth vs. Woelper and al. Quo warranto, the Chief Justice delivered an opinion:

1. That evidence was properly admitted of acts and conversations previous to the day of the election.
2. That the bye-law was sufficiently proved and is itself legal in its different parts.
3. That the Inspectors were right in taking the votes of aliens qualified according to the charter.
4. That the votes given for F. Hæckley tho' a Judge, were lawful.
5. That all tickets should be rejected that had any thing on them but the names—and therefore the tickets with Eagles on them were improperly received. This objection strikes at the root of the election, for the evidence is that all the tickets in favor of the Defendants were stamped with the Eagle. Whatever may be the law therefore on other points it

is clear upon the whole that the defendants were not duly elected. It is so found by the verdict and therefore then ought not to be a new trial.

His Honor Judge Yeates delivered the following opinion.

The acts and declarations of individuals who have been called the German party during the argument, opposed to the partial introduction of the English language in the public worship of the Lutheran churches, were proper evidence in this cause, under the limitation laid down by the Judge, that they had reference to, and could fairly be connected with the election. Whether this inference could fairly and reasonably be deduced from the mass of evidence proposed to be given, was a fit subject of enquiry for the Jury, taking the whole into view and rendering to every witness his due degree of credit. If the minds of the Jurors should not be fully satisfied of this reference and connexion, they were explicitly instructed, that those acts and declarations should have no influence on their verdict. I know of no necessity the relators were subjected to, as to furnishing a minute detail of what they meant to bring forward, in order to invalidate the election. The burthen of proof lay on the defendants to shew that they were duly elected to their several offices. If they were entitled to a specification of the grounds on which the election was intended to be impeached, application should have been made to the court to obtain it.

To disprove the usurpation of office, it was incumbent on the defendants to shew, that legal inspectors superintended the election. Formerly those inspectors were chosen by the congregation, but since the bye-law of 21st December, 1805, they have been appointed by the president of the corporation under it. If this ordinance is declared to be invalid, either on the ground of the want of proof of its having been enacted by a quorum of two thirds of the corporation convened upon due notice, or of its violation of elective franchise, it necessarily follows, that the last election was bad, on account of the illegal appointment of the inspectors. It will not suffice to say, that both sides acquiesced in the inspectors and delivered to them their tickets. The inspectors officiated under the president's appointment by virtue of the bye-law, and if it was radically bad, the appointment was unauthorized. Besides the exercise of this power was the subject of complaint in the congregation, and led in no inconsiderable degree to the disorders on the day of election. If the bye-law has no legal effect, I do not hesitate to say, that the defendants motion must be denied, inasmuch as full justice in that case has been done by the verdict, according to *Wakely vs. Hart and al.* 6 Binney 320. If however the opinion of the learned Judge be correct that the bye-law was valid, and the appointment good, it was properly received in evidence, and the objections to the charge must be considered.

The question whether aliens are entitled to vote at the election of vestrymen and church wardens in this corporation, is highly interesting to the congregation, but is attended with peculiar difficulties. Analagous cases are rarely to be found in the English books, and those cases are not equally authoritative with other parts of the law where the local circumstances of both countries precisely agree. Papal supremacy was prostrated and monasteries were dissolved many years before Mr. Penn obtained the royal charter of Charles II. We know however that it has been adjudged, that an alien may be an administrator, and that he shall have administration of *leases*, as well personal things; because he hath them in another's right and not to his own use. 1. Because *abrdt. aliens D. 138.* who cites *Cro. Car. 8. Vent. 417.* And it is laid down in *Coke Lit. 129.* that an abbot, prior or prioress alien shall have action real, personal, or mixed, for any thing concerning the pos-

session or goods of their monastery; because they sue in their corporate capacity, and not in their own right *to carry the effects out of the kingdom*. This is said to be the doctrine of the common law *founded on the usurpations of the Pope* and that an alien was capable of holding a benefice. Jenk. Cent. 130. pl. 60.

The relators contend, that aliens are not entitled to vote, under the words of the Proprietary Charter of 1765, which recites "that divers members of the German Lutheran Congregation, his majesty's *liege and naturalized subjects* had at a great expense, purchased four lots of ground in Philadelphia, and had erected thereon a school house, parsonage, church &c. and that they had signed fundamental articles, tending to the formation of *faithful subjects* of the king &c. Hence it is said, that *subjects* alone are comprehended in the grant.—But it is observable, that the words of grant in the charter are not restricted *to liege and naturalized subjects*; and the rule is settled, that the preamble shall not controul the general enacting terms of a statute, as in the famous instance of the Coventry act. It also deserves notice, that the confirmatory act of 1780 is wholly silent as to citizenship; and that the 9th section thereof refers to the fundamental articles, and not to the original charter, as to the qualifications of electors. We have not those articles, but as far as we can collect from the corrected and enlarged copy of them published in 1791, they are equally silent as to citizenship. Upon the head of intention, as disclosed in the two charters, I think there is no restriction on the suffrages of aliens.—

How then does the case stand on principle, independantly of authority. I do not hold that the late proprietaries, or their deputy governor could by their *own act* confer on foreigners the rights and privileges of natural born subjects. This only can be done under the sanction of legislative authority. But I can perceive no sound objection against aliens being included in grants with others entitled to those rights and privileges merely for religious purposes. The distinction between incorporations for political and religious ends is sufficiently obvious. Foreigners come to our shores ignorant of our laws and customs, with all their different prepossessions for a particular system of polity. Should they think it expedient they may distract, perplex and thwart the public measures of the country: The sovereign power would naturally guard against such events, and prevent these new-comers from participating all the rights of national born subjects, until they became seasoned to the soil and familiarised with the new government and its local institutions.—The same dangers are not to be apprehended from foreigners desirous of being incorporated with others merely for the exercise of religious duties. They are members of the same persuasion and have imbibed the same tenets of doctrinal faith from early infancy. This union is of a spiritual nature, which they consider to be enjoined on them by the Christian religion. The temporalities of the church may be so fully secured, and their appropriation so distinctly marked out (as in the present instance) that they may be wholly disabled, in the language of the authority cited, *from carrying any of the effects of the church into a foreign land*. Such union, founded on a sense of religious obligation, *tends to the formation of faithful citizens*, and useful members of society. If inconveniences are apprehended from a sudden influx of new-comers, they may be guarded against by wholesome ordinances of the corporation by confining the congregation to reasonable limits suitable to their peculiar circumstances: but even if these supposed mischiefs cannot be fully prevented, I consent myself with remarking, that they result from the nature of the incorporalist, which we cannot alter or abridge.—On this point therefore I am of opinion, that aliens were entitled to vote.

I am also of opinion, that if Frederick Hæckley had been legally appointed an inspector, he might with propriety have returned himself to have been elected a vestryman of the corporation. The legal principle that the same person cannot be judge and party, must give way *graviori legi* to the rights of electors to select those persons they shall judge proper. The acceptance

of the office of judge of the election cannot impair the freedom of choice in his fellow-citizens: The votes must all be counted and the result of the election can only be returned by the proper officers. This is every days practice at our general elections, and is most strikingly exemplified by what took place at the last election of common council men for this city, which was cited on the argument by the defendants counsel.

But there is one insurmountable objection to the defendants election: I mean the impression of the eagle in all the written tickets of the German party. My course of reasoning for some time has proceeded on a supposition of the validity of the bye-law of 21 December, 1805, without which the defendants could not support their claims. It is declared by the 9th section thereof "that if besides the names, there are *other things* on the ticket, or if two or more votes are found together, such tickets shall not be read off, nor the votes counted." The figure of the eagle with the motto "E pluribus unum" is certainly within the words, and I think within the spirit of the ordinance. It was according to the correct expressions of the judge in his charge, "a badge of party, which tended to sow discord and to destroy all harmony and Christian charity." Such a symbol of *disunion* as I term it, was unbecoming in a grave assembly convened for the purpose of electing proper persons to subserve and superintend the important interests of the church, and conduced to widen the breach which unhappily and to our great regret exists among brethren professing the same religious opinions. If the 531 tickets given in by the German party are not counted, the inevitable consequence is that the defendants were not duly elected to their respective offices, and therefore a new trial must be denied to them.

His Honor Judge Gibson, concurring in opinion that a new trial should not be granted, it was accordingly denied.

